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PROPOSALS AND CONTRIBUTIONS RECEIVED FROM GOVERNMENTS

CONTENTS

		Page
I.	INTRODUCTION	1
II.	PROPOSALS AND CONTRIBUTIONS RECEIVED FROM GOVERNMENTS	2
	Canada	2
	France	3
	France and Sweden	8
	Germany	9
	Switzerland	11
	Tunisia	13
	Turkey	14
	United Kingdom of Great Britain and Northern Ireland	16
	United States of America	18

I. INTRODUCTION

The Secretary-General has the honour to bring to the attention of the Ad Hoc Committee proposals and contributions of States that relate to its mandated work. Most of the proposals and contributions contained in the present document were originally submitted prior to or during the Informal Preparatory Meeting of the Ad Hoc Committee, which took place in Buenos Aires from 31 August to 4 September 1998. Several of the proposals and contributions that were submitted by States during that meeting and are not contained in the present document have been incorporated into the new consolidated draft text of the Convention (see

A/AC.254/4). Other contributions were submitted to the Secretariat on the occasion of the third meeting of the informal group of Friends of the Chair, held in Vienna on 5 and 6 November 1998.

II. PROPOSALS AND CONTRIBUTIONS RECEIVED FROM GOVERNMENTS

Canada*

[Original: English]

Firearm protocol

1. In drawing up a draft text for negotiation of the firearm protocol to the United Nations Convention on Transnational Organized Crime, Canada supports the inclusion of measures that would give effect to the following principles:

(a) There must be no safe havens for those who participate in the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition;

(b) States should adopt effective methods of firearm identification and tracing;

(c) Diversion into the illegal market of legally traded and held firearms must be prevented;

(d) States must improve cooperation and exchange of information and data for law enforcement purposes;

(e) States must pursue greater international cooperation through mutual assistance regimes in prosecutions relating to the illicit trafficking of and manufacturing in firearms, their parts and components and ammunition;

(f) States should develop and share technical expertise and training on preventing and combating illicit manufacturing of and trafficking in firearms, their part and components and ammunition;

(g) States must improve measures to prevent, detect and combat the illicit manufacturing of and trafficking in firearms, their part and components and ammunition;

(h) States will take the necessary steps to improve the international legal framework to prevent and suppress illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

2. In view of the regional differences that characterize illicit firearm trafficking and the different regulatory approaches taken by countries, Canada believes that relevant regional initiatives must be taken into account in the development of the negotiating text. Canada also works closely with industry, non-governmental organizations and other interested parties in this area.

3. The following regional initiatives and any other relevant cooperative arrangements should be taken into account:

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*Issued previously as document CICP/CONV/WP.11.

(a) The 1991 European Union Directive on the Control of the Acquisition and Possession of Weapons;

(b) The Organization of American States (OAS) Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials;

(c) The OAS Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition.

4. Canada believes that the following issues need to be discussed:

(a) *Definitions of firearms and their essential parts and components, ammunition, illicit manufacturing and trafficking*. Agreement will be needed on which firearms are to be the target of the protocol, that is, those proved to be of "criminal interest". The wide range of firearms that this is likely to encompass and the lack of any standard nomenclature to describe them will add great complexity to the task of definition;

(b) *Import-export and in-transit authorization-licensing regimes*. A key principle in the strategy to combat illicit firearm trafficking is a more effective regime as regards the legal commercial movements of firearms, their parts and components and ammunition, which is achieved through measures supporting greater transparency and better information. The task here will be to strengthen existing import-export control regimes and trade arrangements and practices and to make them compatible with the principles of a system of reciprocal import-export and in-transit authorizations for legal commercial transfers. It will also be necessary to obtain agreement that such a system does not include government-to-government transfers;

(c) *Firearm identification/tracking and tracing*. The principles behind the tracking of legal commercial movements and the tracing of firearms for the purposes of criminal investigations, evidentiary requirements and prosecutions are linked with the need for unique identification and record keeping on firearms. Record keeping in some States may not be adequate to confirm and validate queries on criminal investigations and movement of firearms that will be required by the principles that are to guide the drawing up of the draft negotiating text. It would also be prudent to conduct consultations with the industry on this matter;

(d) *Information exchange*. The issues in this area will be the need to establish a central point of contact, both for validation as regards the movement of items to be covered by the protocol and also for queries related to criminal investigations and prosecutions.

5. Other issues for discussion include technical assistance and cooperation; criminalization of offences; and reciprocal notification by States of transfers of surplus military firearms to the civilian market.

France*

[Original: English and French]

Article 1

Statement of objectives

The purpose of this Convention is to promote cooperation among the States Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying

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*Issued previously as document CICP/CONV/WP.2.

out their obligations under the Convention, the States Parties shall take necessary measures, including legislative and administrative measures consistent with the fundamental provisions of their respective domestic legislative systems.

Article 2

Definitions

For the purposes of this Convention:

1. "Organized crime" means the activities pursued [the acts committed] within the framework of [in relation with] a criminal organization.

2. A "criminal organization" means any group of [three or more] persons with hierarchial links or personal relationships durably established for the purpose of enriching itself or controlling territories or markets, internal or foreign, by unlawful means such as violence, intimidation or corruption, both in furtherance of criminal activity and in order to infiltrate the legitimate economy.

3. "Participation in a criminal organization" means the conduct of a person who:

(a) Concludes with one or more persons an agreement with a view to committing serious offences as defined under article 3 of this Convention; or

(b) Contributes deliberately to the activity of a criminal organization, either to facilitate the general criminal activity of the group or to serve its goals, or with full knowledge of the group's intention to commit serious offences.

4. "Money-laundering" means the acts described below, where they are intentionally committed and where their author is aware of the assets' origin as being proceeds from offences committed by a criminal organization:

(a) Conversion or transfer of assets with the aim of concealing or disguising the illegal origin of the said assets;

(b) Concealment or disguise of the nature, origin, location, structure, movement or real ownership of illegal assets or rights relating hereto;

(c) Acquisition, holding or use of the incriminated assets.

5. "Proceeds from crime" means any economic advantage accruing from criminal offences committed within the framework of [in relation with] a criminal organization. Such advantage may be an asset of any kind, tangible or intangible, movable or immovable, as well as the legal deeds or documents certifying title to or rights over the asset.

Article 3

Scope of application

1. This Convention shall apply to the prevention and prosecution of serious offences whose circumstances make it reasonable to suppose that they have been committed within the framework of [in relation with] a criminal organization.

2. Serious offences are those defined as such under this Convention and offences punishable by a prison sentence or deprivation of liberty of not less than [four years].

3. The circumstances that make it reasonable to suppose that a criminal organization is involved in the commission of an offence include:

(a) The presence of illegal traffic in person or goods;

(b) The amount of the illegal profits or economic prejudice;

(c) The transnational character of the offence;

(d) The extensiveness of the means employed or the complexity of the organization;

(e) The recourse to money-laundering.

Article 4

Offences and sanctions

1. Each State Party shall undertake to treat, in conformity with its domestic legal system, the following as criminal offences carrying effective, proportionate and deterrent sanctions:

(a) Participation in a criminal organization;

(b) Money-laundering.

2. For the purposes of applying paragraph 1 (b) of this article:

(a) The question of whether the principal offence falls under the criminal jurisdiction of the State Party shall be deemed irrelevant;

(b) It may be stipulated that the offence of money-laundering does not apply to the persons who have committed the principal offence;

(c) Knowledge, intention or final purpose, as constituents of the offence of money-laundering, may be deduced from objective factual circumstances.

3. Each State Party shall aggravate sentences for crimes or offences committed within the framework of [in relation with] a criminal organization as defined under article 2 of this Convention.

4. Each State Party shall also adopt measures to make the following liable to criminal sanctions:

(a) Attempting to commit offences as defined under paragraphs 1 and 3 of this article;

(b) Acting as an accomplice to the offences mentioned under paragraph 1 (b) and paragraph 3 of this article;

(c) Knowingly profiting from a crime or offence committed by a criminal organization.

Article 5

Jurisdiction

1. Each State Party shall take the necessary measures to establish its jurisdiction over the offences mentioned under articles 3 and 4 where such offence is committed in its territory or on board a vessel or aircraft registered in its territory.

2. A State Party may also establish its jurisdiction over any such offence in the following cases:

(a) Where the alleged offender is a national of that State;

(b) Where the offence is committed to the detriment of [against] that State or one of its nations.

3. This Convention does not preclude the exercise of any or all criminal jurisdiction established by a State Party in conformity with its domestic law.

4. The provisions of this article shall not affect obligations relating to the establishment of jurisdiction over offences in accordance with any other multilateral treaty.

5. Where more than one State Party can claim jurisdiction over an offence mentioned under this Convention, the States Parties concerned shall take pains to coordinate their action efficaciously, especially as regards the conditions of prosecution and arrangements for mutual legal assistance.

6. A State Party shall notify the Secretary-General of the establishment of jurisdiction pursuant to paragraph 2.

Article 6

Identification, freezing, seizure and confiscation

1. Each State Party shall adopt the measures needed to identify, freeze or seize any instrumentality or proceeds of the offences mentioned under this Convention, with a view to their eventual confiscation.

2. Each State Party shall adopt the measures required to confiscate:

(a) The proceeds of serious offences, or assets of a value equivalent to that of such proceeds;

(b) Property, equipment and other assets used or intended to be used for committing serious offences.

3. Each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. States Parties shall not refrain from acting under the provisions of this paragraph on the ground of bank secrecy.

Article 7

Liability of legal [corporate] persons

1. Each State Party shall take the measures needed to ensure that legal [corporate] persons may be held liable where they profit from a criminal activity or participation in the working of a criminal organization.

2. Subject to the fundamental legal principles of the State Party, the liability of the legal [corporate] person may be criminal, civil or administrative.

3. Such liability shall be incurred without prejudice to the criminal liability of the natural persons who have committed the offences or of their accomplices.

4. Each State Party shall, in particular, ensure that legal [corporate] persons may be punished in an effective, proportionate and deterrent manner, and that substantial economic penalties may be imposed on them.

Article 8

Prosecution, sentencing and adequate sanctions

1. Each State Party shall make the offences mentioned under this Convention punishable by sanctions commensurate with their seriousness, such as imprisonment, other forms of deprivation of liberty, fines and confiscation.

2. States Parties shall endeavour to ensure that any discretionary legal powers conferred under their domestic law and connected with the prosecution of persons for offences mentioned under this Convention are exercised so as to maximize the effectiveness of the detection and enforcement measures applying to those offences, due account being taken of the need to deter the commission of such offences.

3. States Parties shall ensure that their courts or other competent authorities bear in mind [take into account] the serious nature of the offences mentioned under this Convention when considering the early discharge or release on parole of persons convicted of such offences.

4. Each State Party shall where appropriate set a long statute of limitations period under its domestic law in which to initiate proceedings concerning any of the offences mentioned under this Convention, that period being longer where the alleged offender has escaped being brought to justice [trial].

5. Each State Party shall ensure that the acts mentioned under articles 3 and 4 of this Convention and committed in its territory shall be indictable regardless of where in the territories of Member States the criminal organization is based or exercises its criminal activities.

6. Where instances of participation in a criminal organization fall under the jurisdiction of several Member States, those States shall consult in coordinating their action for initiating effective criminal proceedings.

7. Each State Party shall take appropriate measures, consistent with its legal system, to ensure that any person charged with or convicted of an offence mentioned under this Convention and present in its territory attends the relevant criminal proceedings.

France and Sweden*

[Original: English, French and Spanish]

Extradition

1. This article shall apply to the offences established by the States Parties in accordance with article __, paragraph __.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

7. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

9. The State Party in the territory of which the offender or the alleged offender is found, if, solely on the basis of the nationality of the person sought, it does not extradite that person, shall be obliged, upon request

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*Issued previously as document CICP/CONV/WP.7.

of the State Party seeking extradition, in cases where article(s) __ applies, whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and in conformity with the requirement of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party or the remainder thereof.

11. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article(s) __ shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

12. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

13. States Parties may consider entering into bilateral or multilateral agreements, either ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

14. With respect to the offences as defined in article(s) __ of this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent necessary to give effect to the provisions of this Convention.

Germany*

[Original: English]

1. The most difficult and time-consuming issue in the discussions on the drawing up of the proposed Convention against Transnational Organized Crime has been and probably will be in future meetings the scope of application of the Convention. The Open-ended Intergovernmental Ad Hoc Committee has up to now examined in principle three alternatives:

(a) Use of the "statement of objectives" to provide a frame of reference for the entire Convention;

(b) Use of a "seriousness test" combined with an "organized nature test";

(c) Use of either an exhaustive or illustrative list of offences.

2. One proposal (Finland) now suggests that the Convention should apply to serious crime when the circumstances provide reasonable grounds to believe that a criminal organization was involved in the commission of the crime and spells out some of the circumstances under which this may be assumed. In the field of transborder judicial cooperation (extradition, mutual assistance, freezing of assets and enforcement of foreign confiscation orders), this suggestion immediately raises the question as to whether only the requesting State has to have reasonable grounds to assume a link to "organized crime" or whether this is true for the requested State also. In the light of the principle of dual criminality, one would probably have to assert the second possibility.

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*Issued previously as document CICP/CONV/WP.8.

This would in practice lead to a very heavy burden of proof, especially in the field of mutual assistance when the offence has just been discovered and, by ordinary experience, it seems to be linked to organized crime but no such proof is available. Clearly, this would lead to serious lacuna in the international fight against organized crime. On the other hand, when a request for extradition or the execution of a confiscation order is made, such a link to organized crime will probably be easier to assess.

3. Taking into account the Japanese non-paper (E/CN.15/1998/11, appendix IV), Germany would like to make the following tentative proposal.

"*Article X*

"*Scope of the Convention*

"1. The purpose of this Convention is to promote cooperation among the Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems. [art. 1, option 1, E/CN.15/1998/11, appendix 1]

"2. For that purpose, unless the context requires otherwise, organized crime shall be deemed to be any serious crime, committed within the jurisdiction of two or more States, that is punishable under the laws of the requesting Party and of the requested Party by imprisonment or other deprivation of liberty for a maximum period of at least two years or by a more severe penalty.[1]

"3. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and the principle of non-intervention in the domestic affairs of other States.

"4. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic law. [United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, art. 2, paras. 2 and 3]

"*Extradition*

"1. This Article shall apply to serious offences as defined in article X, paragraph 2, under the condition that:

"(a) The offence was committed by a member of a criminal organization as defined in article Y; or

"(b) The offence is a predicate offence of money-laundering under the law of the requesting Party.

"2. [Art. 6, paras. 2-12, of the 1988 Convention as appropriate].

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[1]This does not however exclude the possibility of foreseeing a ground for refusal in the field of mutual assistance in criminal matters, for example, if the offence to which the request relates would not be considered to be linked to organized crime if committed under the jurisdiction of the requested State Party.

"*Money-laundering*

[Art. 4 and 4bis, appendix 1, E/CN.15/1998/11]

"'Predicate offence'" means any criminal offence that under the law of a Party is punishable by deprivation of liberty or imprisonment for a period of at least four years or was committed by a member of a criminal organization as defined by article Y as a result of which proceeds were generated that may become the subject of an offence as defined in article 4 of this Convention."

Switzerland*

[Original: English]

Views on marking of small arms and light weapons

Some aspects of the problem

1. It seems obvious that marking cannot be a goal in itself, but the information provided by a reliable system of marking is an essential element of accountability and transparency, in particular, in the criminal or the political sense. Without precise information, it is impossible for a prosecutor to provide sufficient evidence, or to create the openness required for confidence and stability. Moreover, information is of little value if Governments, manufacturers and owners of small arms and light weapons are not prepared to assume responsibility for their proliferation and use.

2. It might be considered a basic requirement that marking should enable us to assign any weapon or explosive to its manufacturer and registered owner. It should also be possible to elucidate the path a weapon has taken from the manufacturer to the end-user. An essential condition of this basic requirement is the registration of the tagged code, together with information on the owner of the weapon.

3. The benefits of accurate information through marking are easily lost, however, when tagged weapon parts are replaced by unmarked parts or codes are deleted. Furthermore, the widespread production of weapons under licence makes it difficult to distinguish for instance a Russian-made AK-47 assault rifle from a Chinese-made one, or a Swiss-made anti-aircraft gun from one produced in the United States. This problem is aggravated by the lack of a universally agreed standard of information for tagging codes.

Preliminary thoughts on marking techniques

4. Tagged weapon parts may easily be replaced or codes deleted. So, firstly, a specific working group in Switzerland examined whether it would be possible to mark a part that could be replaced; secondly, whether one could mark a part such that erasure of the code would render the weapon inoperable; and, thirdly, whether it would be possible to mark a weapon with a code that could be deleted.

5. The answers to the first and second questions were unfortunately negative.

6. Firstly, it seems almost impossible to produce a part of a weapon that cannot be exchanged. Small arms are relatively easy to manufacture. The skills required are not too advanced, as the example of Afghan backyard manufacturers of AK-47 assault rifles reveals. As far as light weapons are concerned, the situation is slightly

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*Issued previously as document CICP/CONV/WP.19.

different, owing to the higher pressures of the stronger charges fired. The strain on essential parts of the weapon, such as barrels, bolts and receivers, is much greater. Thus, it should be more difficult to obtain the high-quality steel required for the reliable functioning of the weapon. However, even the essential parts of light weapons may be replaced, although the respective costs are higher.

7. Secondly, according to our knowledge, marking on weapons usually has a depth of between 0.1 mm and 0.3 mm. The most common methods of deleting markings are grinding and drilling. Weapon parts where deleting the markings would render the weapon inoperable would therefore have to be parts with small tolerances. Those parts are mostly within the trigger system or the bolt system, and are by themselves so small that it is almost impossible for the manufacturer to tag them with reasonable expenditure.

8. Concerning the third question, the working group considered two possibilities, either rendering the marking inaccessible or making it invisible. Since the results were quite encouraging, respective efforts were increased. Together with police services and representatives of Swiss defence industries, we focused on three techniques for marking weapons: laser marking within the material, stamp marking of raws and marking of colours or synthetics with glass bubbles.

9. Codes marked by such techniques could not be seen by a normal citizen, but they could easily be identified and made visible by government experts with supportive equipment. To facilitate identification by non-governmental actors, the invisible codes should be applied additionally and not alternatively to conventional visible marking techniques. Furthermore, to achieve an even higher degree of reliability, it might be possible to combine the invisible techniques.

Additional requirements

10. Although it seems realistic to mark weapons with codes that are in principle inaccessible or invisible, it is obvious that the parts may be replaced by anybody who simply presumes the existence of hidden codes, even if he has not located them.

11. Thus, the next question was whether it would be possible to raise the cost of replacing marked parts. Here, we face a dilemma: police services say the more markings there are, the more expensive replacement of the specific parts becomes. Defence industries say the fewer markings there are, the cheaper production gets. A possible solution could be to mark those parts which are most difficult and most expensive to replace or rebuild. We believe that the Swiss practice of marking small arms, namely, by tagging barrel, bolt and butt, may constitute a sensible compromise.

12. Another point is how to identify unambiguously the origin of a weapon, taking into account the problem of licensing and globalization of trade.

13. It might be helpful to establish an accepted standard. This standard code should contain more information than the mere serial number of the weapon. It should also be relatively cheap and easy to apply by manufacturers. Therefore, such a code should be defined with the help of police forces and weapon manufacturers of countries most active in the field.

14. Furthermore, it seems clear that such an agreed standard for marking would need as wide a participation as possible to gain the utmost benefit. We believe that a system of incentives for both Governments and defence industries should be established, with a view to encouraging them to join such an agreement on a standard.

For comments, questions and suggestions on marking please refer to:

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Tunisia* **

[Original: French]

Article 1

1. In the definition of "organized crime", a distinction should be drawn between the criminality of individuals and collective criminal enterprise. We therefore suggest that "organized crime" be defined as any criminal activity undertaken by more than one person without a fixed minimum being set for the number of persons making up the group.

2. In addition, the aim sought by organized criminal activity must be defined as the pursuit of material profit; the control of territories and markets and infiltration of the legitimate economy are no more than means to that end.

Article 1, subparagraph (f)

3. The terrorist acts referred to in this subparagraph need to be defined. Are the acts in question terrorist acts as defined by the domestic legislation of countries or are they acts as governed by the relevant international conventions or, again, are they terrorist acts as defined by the two United Nations declarations adopted by the General Assembly at its forty-ninth and fifty-first sessions concerning measures to combat international terrorism?

4. We propose that paragraph 2 be deleted from article 1, since it adds nothing to the initial definition.

5. Article 1 should also include a reference to incitement to the acts enumerated and also to attempts to commit those acts.

Article 2

6. We would suggest adding to paragraph 2 of this article the idea that each State should also make punishable the act of recruiting persons to form a group or association for the purpose of engaging in organized crime, training such persons or giving them instruction in the bearing of arms, as well as the act of funding the formation of such groups.

Article 6

7. Given that article 2 requests States to establish participation or association as punishable offences and should also establish as such the other violations that we have proposed be added to article 2, we would suggest

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*Issued previously as document CICP/CONV/WP.3.

**The comments of Tunisia refer to the text of the draft Convention contained in document A/C.3/51/7.

that article 6 also mention the offences covered by article 2, in addition to those specified by article 1 and to be deemed extraditable offences.

8. The reference to the offences specified in article 2 will need to be repeated whenever there is a reference to the offences mentioned in article 1, namely, in articles 4, 5, 7, 8, 10 and 12.

Article 7

9. We would suggest that Contracting States whose domestic legislation does not permit the extradition of nationals be accorded the right to state that they do not consider themselves bound by this article, especially as all the Contracting States are required to take the necessary measures to establish their jurisdictional competence, even in the most complex cases. That said, States are best qualified to try their own nationals.

Article 8

10. There needs to be added a paragraph 3 specifying that, when the circumstances referred to in paragraph 2 obtain, the State requested to carry out extradition shall, while rejecting the request, itself undertake the prosecution and judgement.

Article 10

11. We propose that paragraph 1 of this article be concluded after the phrase "article 1 of the present Convention" and that the rest of the paragraph be deleted on the ground of being vague.

Turkey*

[Original: English]

Link between transnational organized crime and terrorism

1. The Government of Turkey strongly believes that coherent and cooperated efforts of the international community to combat all forms of transnational organized crime are of vital importance in ensuring the safety of the people and the strengthening of democracy, since transnational organized crime seriously threatens public order, peace and the human rights of individuals.

2. Turkey, being a target of terrorism herself, strongly condemns all kinds of terrorism, no matter what its source or objective is. She has consistently supported bilateral and multilateral cooperation to combat this evil.

3. She is convinced that such terrorist activities constitute one of the major threats against humanity and can only be prevented by the establishment of effective and serious international cooperation.

4. Turkey believes that no country should allow the use of its territory by terrorists or allow the provision of any facility that would enable terrorist organizations to plan or implement violent acts that harm civilians.

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*Issued previously as document CICP/CONV/WP.10.

5. Investigations on all forms of transnational organized crime in various countries prove that close links exist between different forms of transnational organized crime. Criminal organizations, by engaging in transnational criminal activities that yield very high profits, such as illegal trafficking in drugs, not only obtain extensive financial resources for executing other kinds of criminal activities such as terrorism, but also corrupt some officials, launder the proceeds obtained from their activities. In other words, it is obvious that one form of transnational organized crime gives birth to and fosters other forms of transnational organized crime.

6. Turkey has been successfully implementing a struggle against illegal production of and trade in drugs for many years. The lack of public authority in certain areas of the Middle East, in particular in northern Iraq during the last decade, has caused certain terrorist groups, mainly the Kurdistan Workers Party (PKK), to take part in all stages of illegal trafficking of drugs. Those groups utilize the finances they have obtained to procure firearms and to execute terrorist acts against civilians. They are also involved in money-laundering to conceal their resources. This case very clearly points to the links between terrorism and other forms of transnational organized crime, which have already been mentioned generally in several international instruments and forums.

7. The PKK is a terrorist organization carrying out all kinds of organized crime and illicit drug trafficking. In fact, in 1997, 2,455.550 kg of heroin, 13,357.817 kg of hashish, 4,255.14 kg of morphine base, 1,125.258 kg of cannabis, 22,440.440 kg of acetic anhydride, 100 g of cocaine, 20,000 amphetamine tablets and 1,080 kg of sodium bicarbonate that were confiscated in Turkey were found to be linked with the PKK and 551 PKK offenders were caught in connection with the issue.

8. Moreover, the PKK is utilizing illegal migrants in Europe for its organized criminal activities. It is also carrying out money-laundering in the form of drug-for-money exchanges, laundered by buying real estate. PKK activities in Turkey and Europe are clear indications of the linkage between terrorism and organized crime in all its forms, such as illegal migration, money-laundering and illicit drug trafficking.

Scope of the Convention against transnational organized crime

9. In this context, Turkey considers that the Convention against Transnational Organized Crime should cover all forms of transnational organized crime and terrorism and should foresee effective measures in this regard. The Convention will thus constitute a cornerstone in the fight against transnational organized crime.

10. For this purpose, beyond theoretical and idealistic concerns, realities in the area of transnational organized crime should be scrutinized and the most appropriate and balanced measures should be developed.

11. Terrorism as a form of transnational organized crime and the links between all forms of transnational organized crime should be explicitly emphasized in the draft Convention against Transnational Organized Crime. To that end, the article on the scope of the Convention should include an illustrative list of transnational organized crimes, which covers terrorist acts explicitly, so that misinterpretations will not occur as regards criminalized offences under the Convention. Otherwise, it is possible to foresee that the effectiveness of the Convention will be restricted to a great extent. In this regard, Turkey reiterates that she is in favour of option 3 of article 2 of the draft Convention against Transnational Organized Crime given in the report of the Commission on Crime Prevention and Criminal Justice on the work of its seventh session.[1]

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[1] *Official Records of the Economic and Social Council, 1998, Supplement No. 10* and corrigendum (E/1998/30 and Corr.1).

United Kingdom of Great Britain and Northern Ireland*

[Original: English]

Combating illegal manufacturing of and trafficking in firearms, their parts and components and ammunition

Statement of principles

We hereby endorse the following principles, which we recommend to all countries to assist in combating illegal manufacturing of and trafficking in firearms, their parts and components and ammunition:

1. There must be no safe havens for those who participate in the foregoing illegal activities.

2. States should adopt effective methods of firearm identification and tracing.

3. Diversion into the illegal market of legally traded and held firearms must be prevented.

4. States must improve cooperation and exchange of information and data for law enforcement purposes on the foregoing illegal activities.

5. States must pursue greater international cooperation through mutual assistance regimes in prosecutions relating to the foregoing illegal activities.

6. States should develop and share technical expertise and training on preventing and combating the foregoing illegal activities.

7. States must improve measures to prevent, detect and combat the foregoing illegal activities.

8. States will take the necessary steps to improve the international legal framework to prevent and suppress the foregoing illegal activities.

Action plan

In support of the principles relating to the illegal manufacturing of and trafficking in firearms, their parts and components and ammunition, members of the Group of Eight major industrialized nations intend to, and encourage other States to:

1. Establish as criminal offences under their domestic law the foregoing illegal activities and include such forms of complicity as are generally foreseen in the respective national law.

2. Adopt such measures as may be necessary for each State to establish jurisdiction over the offences mentioned above when the offence is committed in its territory; and if a State considers it appropriate and the offence violates the State's domestic law, when the offence was committed outside the State's territory by one of its nationals or by a person who habitually resides in its territory.

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*Issued previously as document CICP/CONV/WP.5.

3. Consider such measures as may be necessary for each State to establish jurisdiction over the offences mentioned above when the alleged criminal is present in its territory and it chooses not to extradite such person to another country solely on the ground of the nationality of the alleged criminal.

4. Upon request of the State seeking extradition, take appropriate action to submit the offences mentioned above to the competent authorities for prosecution where the State does not extradite the alleged criminal solely on the ground of the nationality. In doing so, that State should give the same priority, personnel and financial resources as it would for other similar serious crimes committed in its territory.

5. Mark firearms appropriately at manufacture and following importation for the purpose of commercial sale within the importing country, or permanent private importation, so that the source of the firearms can be traced.

6. Encourage the firearm manufacturing industry to develop measures against the removal of markings.

7. Cooperate with the International Criminal Police Organization (Interpol) to study the feasibility of developing an information system to assist in the identification of firearms and ammunition.

8. Respond accurately and promptly to tracing requests from other States.

9. Assure the retention for a reasonable time of the information and intelligence necessary to trace and identify illegally manufactured or trafficked firearms.

10. Through national central points of contact make use of knowledgeable personnel to ensure timely exchange of information relating to the foregoing illegal activities and to exchange information with each other by means of direct communication when necessary.

11. In urgent and appropriate cases, accept and respond to mutual assistance requests relating to the foregoing illegal activities by expedited but reliable means of communication.

12. Establish or maintain an import/export and in-transit licensing or similar authorization regime for the international transfer of firearms.

13. Take appropriate steps to ensure that sufficient law enforcement, security/intelligence agencies and customs personnel are trained, equipped and dedicated to the task of combating the foregoing illegal activities.

14. Arrange joint training and exchange programmes.

15. Promote effective multidisciplinary coordination among all relevant agencies at national and international levels to address the problem of the foregoing illegal activities.

16. Obtain the support and cooperation of manufacturers, dealers, importers, exporters and commercial carriers of firearms to prevent and detect the foregoing illegal activities.

17. Encourage public support and cooperation in the prevention and detection of the foregoing illegal activities.

18. Prevent illegally manufactured and trafficked firearms and ammunition from falling into the hands of criminals by seizing and destroying such firearms and ammunition unless other disposal has been

officially authorized and the firearms and ammunition have been marked or recorded and their disposal also recorded.

19. Encourage the adoption of appropriate measures to prevent the reactivation of deactivated firearms, when such reactivation is a crime under the State's domestic laws.

20. Work toward the elaboration of a binding international legal instrument to combat the foregoing illegal activities in the context of a United Nations Convention against Organized Transnational Crime and taking into account existing international instruments and other ongoing initiatives.

United States of America*

[Original: English]

Comments on the scope of the United Nations Convention

A. Draft text

Article 2

Scope of application

This Convention shall, except as otherwise provided herein, apply to the prevention, investigation and prosecution of organized criminal activity as defined in article 2 *bis* and to the offences in articles 3 and 4.

Article 2 bis

Definitions

For the purposes of this Convention:

1. "Organized criminal activity" means [the commission of] serious crime involving a group of [three] or more persons, [either for its own sake or] for any purpose relating, directly or indirectly, to the obtaining of a financial or other material benefit.

2. "Serious crime" means conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least [ ] years, or more serious penalty.

(a) For the purpose of implementing articles __ of this Convention [pertaining to criminalization under articles 3 and 4 and other domestic obligations], a State Party shall consider this definition to refer to a criminal offence under its laws.

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*Submitted during the third meeting of the Friends of the Chair, held in Vienna on 5 and 6 November 1998.

(b) For the purpose of implementing articles __ of this Convention [pertaining to international cooperation], a State Party may deny cooperation as to conduct that would not also constitute a serious crime under its laws.

B. Other comments

1. The scope of the Convention should be flexible, in the sense that different tools may need to have different scope. To facilitate this, the "scope" article will probably need words such as "except where otherwise provided".

2. The Convention should fulfil the mandate of facilitating the prevention, prosecution and investigation of transnational organized crime. The achievement of this objective requires some tools to be applied to a broader class of conduct, however, because of the difficulty for practitioners, during the earlier stages of an investigation, of demonstrating the involvement of transnational organized crime.

3. The Convention should address organized crime in general. It should not be limited to highly structured and enduring organizations like the Mafia.

4. Article 1 of the Convention should include crimes having an international aspect, but it may not be necessary to limit the Convention expressly to transnational crime. A decision on whether, and in what form, to include a transnational element should be deferred until examination of each article has been completed.

5. The Convention should not apply expressly to terrorism, but it should not exempt terrorists who commit organized crime offences.

6. The requirement of a purpose to obtain a financial benefit is important, as this aids in excluding crimes of terrorism. However, not all relevant crime is motivated by profit or material benefit (e.g. computer hacking or "cooperative" distribution of child pornography). It is for consideration whether this requires an adjustment of the United States' definition, for example, by including crime committed for its own sake or by some formulation that would otherwise include non-political ends that have no pecuniary motive. However, the formulation should not be so broad that it would turn the Convention into a global serious crime instrument. An alternative would be to limit the general scope to profit-making crime, but to allow some tools to be applied more broadly.

7. Offences that do not have a direct profit motive but serve to expand and maintain a criminal organization should be included in the scope of the Convention.

8. The preference would be for a broad and simple description of the type of organized criminal activity aimed at, of the type set out in the draft text above.

9. Further consideration is needed on whether the Convention should apply, at least in some respects, to legal activities of criminal organizations (such as acquisition of property).

10. It is desirable that the mutual assistance article does not unduly impede the ability of a requesting State to obtain assistance at an early stage of the investigation, when it may not be able to demonstrate the involvement of organized crime to the satisfaction of the requested State. This potential problem could be addressed in a number of ways. One approach might be to extend application of the article to cover all serious crimes. However, if this approach is followed, a mechanism will be needed to allow States Parties to apply the Convention more narrowly (e.g. only in organized crime cases). Further consideration is required on which approach would be preferable.

11. The obligation to criminalize participation in a criminal organization (or association or conspiracy) should not necessarily be restricted to transnational crime. A more detailed definition of "criminal organization" is appropriate for this article (perhaps drawing on the European Union's Joint Action).

12. In accordance with the recommendations of the Financial Action Task Force, States should be required to criminalize the laundering of the proceeds of appropriate serious crimes, regardless of whether the crime is organized or transnational.

13. States should be required to assume powers to freeze and confiscate proceeds and instrumentalities of appropriate serious crimes, regardless of whether the predicate offence is organized or transnational.

14. The provisions on extradition should apply at least to the offences of money-laundering and participation in a criminal organization, but should not necessarily apply to other offences covered by the Convention. Dual criminality and other usual safeguards should apply.

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PROPOSALS AND CONTRIBUTIONS RECEIVED FROM GOVERNMENTS

CONTENTS

Page

I. INTRODUCTION 2

II. PROPOSALS AND CONTRIBUTIONS RECEIVED FROM GOVERNMENTS 2

Japan 2
Mexico 6
United Kingdom of Great Britain and Northern Ireland 19
United States of America 22

I. INTRODUCTION

The Secretary-General has the honour to bring to the attention of the Ad Hoc Committee the comments and proposals of States that relate to the draft international legal instrument against illicit manufacturing of and trafficking in firearms, ammunition and other related materials, which was submitted by the Government of Canada.

V.98-57824 (E)

II. PROPOSALS AND CONTRIBUTIONS RECEIVED FROM GOVERNMENTS

Japan

[Original: English]

2. Comments on the Canadian draft firearm Protocol

1. Japan appreciates the efforts of the Government of Canada in drafting the protocol on firearms. The following are Japan's tentative comments on that draft. These comments are, as noted above, tentative and there will therefore be additional and modified comments based upon discussions to be held during the meetings of the United Nations Ad Hoc Committee.

Overview

2. Japan is greatly concerned about illicit trafficking in and manufacturing of firearms, ammunition and other related materials. The necessity of regulation should be recognized and strongly supported. As a result, Japan greatly appreciates the Canadian initiative.

3. The main concern with regard to the draft Protocol is related to the kind of activities that should be criminalized. To summarize the comments below, whether the article stipulates an obligation for the State Party to punish the conduct as a crime or stipulates an obligation for the State Party to take appropriate measures to prevent the conduct should be considered carefully.

Article I

4. In relation to the Convention against Transnational Organized Crime, it is not clear what the phrase "the Convention and the Protocol shall be read and interpreted together as one single instrument" means (i.e. whether all the tools stipulated in the Convention shall be applied to the conduct criminalized in the Protocol, and the nature of the relationship between the Protocol and the scope of Convention). Therefore, more detailed explanation of this will be needed.

Article II

5. Generally speaking, the definitions in each subparagraph should be clearly outlined in order to adjust the whole structure of the Protocol. Therefore, further consideration is necessary. Moreover, it needs to be stipulated, after careful discussion, which specific parts and components should be included in the Protocol.

Subparagraph (a)

6. The meaning, contents and significance of each word used in this section should be clarified in future discussions.

Subparagraph (b)

7. The words "or substance substituted for them" should be added, as stipulated in subparagraph (g) of article 1 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Subparagraph (c)

8. In this section, "in accordance with its domestic laws" should be added.

Subparagraph (d)

9. The meaning, contents and significance of each word used in this section should be clarified in future discussions.

Subparagraph (e)

10. The definition of "illicit trafficking" should be clarified. (Its provisions, with the exception of import and export, are unclear.)

Subparagraph (f)

11. The meaning of "other related materials" should be clarified.

Other comments

12. The definition of "tracing" should be stipulated in the Protocol. (For example, "the systematic tracking of firearms from manufacturer to purchaser (and/or possessor) for the purpose of aiding law enforcement officials in identifying suspects involved in criminal violations, establishing stolen status and proving ownership", in the United Nations international study on firearm regulations.)

Article III

13. As mentioned in the United States comments, a provision such a ticle 2 of the OAS Convention, namely, "prevent, combat, eradicate, exchange of information and experience etc.", should be added.

Article IV

14. The word "commercially" should be removed and a provision related to illicit manufacturing corresponding to "manufacturing" should be added.

15. The meaning of the phrase "international transactions or transfers for purposes of national security," should be more clearly stipulated. With regard to the phrase "but not to international transactions or transfers for purposes of national security", it is not clear whether "for purposes of national security" is related to "international transactions or transfers" or only to "transfers". Therefore, this point should be clarified. If it relates only to "transfers", in order to avoid ambiguity, the United States comment ("it does not apply to State-to-State transactions or to transactions for the purposes of national security") is more appropriate. The distinction between "transactions" and "transfers" should also be clarified.

16. Generally speaking, military forces stationed in foreign countries are not under the control or jurisdiction of the recipient State despite the fact that they are in action in the territory of the recipient State Party. Therefore, the State Party should not be obliged to implement the obligations stipulated in the Protocol concerning foreign military forces stationed in the State Party.

Article V

17. The word "unlawfully" should be added before the term "intentionally", as is stipulated in paragraph 1, article 2, of the International Convention for the Suppression of Terrorist Bombings, or in paragraph 1, article 3, of the Convention for the Suppression of unlawful Acts against the Safety of Maritime Navigation.

18. To offer funds and transportation for illicit manufacturing and trafficking should be criminalized.

Paragraph 1

19. See the comments in the overview and on article II.

Article V *bis*

20. There should be a provision that encourages State Parties to reduce or exempt from penalty in the case of voluntary surrender to the authorities for the collection of illicit firearms.

Article VII

21. The meanings of "obligations", "record keeping" and "information" should be clarified.

22. The reason why each State Party should maintain information for "10" years is unclear. The appropriate retention period should be considered and agreed to pursuant to future discussions of the Protocol.

Article IX, paragraph 1

Subparagraph 1 (b)

23. The period for marking of imported firearms should be clearly defined. (For instance, the period during which they pass through customs or during which they are legally obtained by the final recipient.)

24. Subparagraph 1 (b) should be worded as No. 18 of the G-8 Action Plan, which reads "unless other disposal has been officially authorized and these firearms and ammunition have been marked or recorded and their disposal also recorded".

Article XI

25. To be effective, recognition should be also imposed in the case of import from, export to and transit through non-State Parties. This would reduce detour exports.

Paragraph 2

26. "Transit" should be clearly defined, because it is not appropriate to impose obligations on the State Party in the following cases: aircraft merely flying over the territory of the State Party; a ship making innocent passage through territorial waters; aircraft in transit through an airport of the State Party; or a ship in transit through the seaport of the State Party.

Paragraph 4

27. The meanings of "upon request", "receipt" and "inform" should be clearly stipulated.

28. When setting up structures based on this paragraph, full consideration should be given to the protection of privacy and a civil servant's obligation to preserve secrets, as provided for in related domestic law.

Article XII

29. Measures to ensure the security of firearms imported and so on should be clarified.

Article XIII

30. The meaning of "controls at points through which exports pass" should be clarified (for example, does it mean inspection at the customs of an airport or port?).

Article XV

31. "A single point of contact", as provided for in this article, should allow the exchange of information already established among the existing authorities.

Article XVII

32. See the comments in paragraph 28 above.

Article XVIII

33. This article should appear as paragraph 3 of article XVI.

Other comments

34. "Obtaining the support and cooperation of manufacturers, dealers, importers ..." (No. 16 of the G-8 Action Plan), and "encouraging the public support and cooperation" (No. 17 of the G-8 Action Plan) should be referred to at some point in the Protocol.

Mexico

[Original: English]

CANADIAN DRAFT	MEXICAN PROPOSALS
Preamble	*Preamble*
(a) ~~*Bearing in mind* that freedom from the fear of crime is fundamental to international cooperation and to the sustainable development of States and that international illicit trafficking in and criminal misuse of firearms have a harmful effect on the security of each State and endanger the well-being of peoples and their social and economic development,~~	***Aware*** **of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials, owing to the harmful effects of these activities on the security of each State and the region as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,**
(b) *Concerned* by the increase, at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and by the serious problems resulting therefrom,	*Concerned* by the increase, at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials and by the serious problems resulting therefrom,
(c) *Reaffirming* that States Parties give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,	*Reaffirming* that States Parties give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,
	Concerned **about the illicit manufacture of explosives from substances and articles that in and of themselves are not explosives—and that are not addressed by this Convention owing to their other lawful uses—for activities related to drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,**
(d) *Considering* the urgent need for all States, and especially those States that produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,	*Considering* the urgent need for all States, and especially those States which produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials,
(e) *Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials requires international cooperation, exchange of information, and other appropriate measures at the national, regional and global levels,	*Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials requires international cooperation, exchange of information and other appropriate measures at the national, regional and global levels,

(g) *Stressing* that the promotion of harmonized import and export controls over the ~~licit~~ international movement of firearms, ammunition and other related materials, ~~in addition to a system of procedures for applying them~~, is essential to the prevention of illicit ~~international~~ trafficking,

Stressing that the promotion of harmonized import, export and **in-transit** controls over the international movement of firearms, ammunition, **explosives** and other related materials is essential to the prevention of illicit trafficking,

***Stressing* the need, in peace processes and post-conflict situations, to achieve effective control of firearms, ammunition, explosives and other related materials in order to prevent their entry onto the illicit market,**

***Mindful* of the pertinent resolutions of the General Assembly on measures to eradicate the illicit transfer of conventional weapons and on the need for all States to guarantee their security,**

(f) *Recognizing* the importance of strengthening existing international law enforcement support mechanisms, such as the weapon and explosive tracking system of the International Criminal Police Organization, to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,

Recognizing the importance of strengthening existing international law enforcement support mechanisms, such as the weapon and explosive tracking system of the International Criminal Police Organization, to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, **explosives**, and other related materials,

(h) *Recognizing* that States have developed different cultural and historical uses for firearms, and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not intended to discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by the States Parties,

Recognizing that States have developed different cultural and historical uses for firearms, and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not intended to discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by the States Parties,

(i) *Recalling* that States Parties to the present Protocol have their own domestic laws and regulations on firearms, ammunition and other related materials and recognizing that this Protocol does not commit the States Parties to enact legislation or regulations pertaining to firearm ownership, possession or trade of a wholly domestic nature and that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

Recalling that States Parties to the present Protocol have their own domestic laws and regulations on firearms, ammunition and other related materials, and recognizing that this Protocol does not commit the States Parties to enact legislation or regulations pertaining to firearm ownership, possession or trade of a wholly domestic nature, and recognizing that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

Reaffirming the principles of sovereignty, non-intervention and the juridical equality of States,

Article I

This Protocol supplements the United Nations Convention against Transnational Organized Crime, done at ... (hereinafter referred to as "the Convention"), and, as regards the States Parties to the Convention and to the Protocol, those two instruments shall be read and interpreted together as one single instrument.

Article II
Definitions

For the purpose of this Protocol, the following definitions shall apply:

(a) "Ammunition": the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm;

~~(b) "Controlled delivery": the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials to pass out of, through or into the territory of one or more States with the knowledge and under the supervision of the competent authorities of that State or those States, with a view to identifying persons involved in the commission of offences referred to in article V of this Protocol;~~

(c) "Firearms": any barrelled weapon that will be or is designed or may be readily converted to expel a bullet or projectile by the action of an explosive, including any frame or receiver of such a barrelled weapon but not including any antique firearm manufactured before the twentieth century or its replicas;

(d) "Illicit manufacturing": the manufacture or assembly of firearms, ammunition and other related materials:

(i) From components or parts illicitly trafficked; or

Article I

This Protocol supplements the United Nations Convention against Transnational Organized Crime, done at ... (hereinafter referred to as "the Convention"), and, as regards the States Parties to the Convention and to the Protocol, those two instruments shall be read and interpreted together as one single instrument.

Article II
Definitions

For the purposes of this Protocol, the following definitions shall apply:

(a) "Ammunition": the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm;

(b) "Firearms":

(i) Any barrelled weapon that will be or is designed or may be readily converted to expel a bullet or projectile by the action of an explosive, including any frame or receiver of such a barrelled weapon but not including any antique firearm manufactured before the twentieth century or its replicas;

(ii) Any other weapon or destructive device such as any explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine;

(c) "Illicit manufacturing": the manufacture or assembly of firearms, ammunition, **explosives** and other related materials:

(i) From components or parts illicitly trafficked; or

(ii) Without a licence from a competent governmental authority of the State Party where the manufacture or assembly takes place; or

(iii) Without marking the firearms at the time of manufacturing;

(e) "Illicit trafficking": the import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition and other related materials from or across the territory of one State Party to that of another State Party, if any one of the States Parties concerned does not authorize it;

(f) "Other related materials": any component, parts or replacement parts of a ~~firearm that are essential to its operation~~ or accessories that can be attached to a firearm ~~and that enhance its lethality.~~

Article III
Purpose

The purpose of this Protocol is to promote and facilitate cooperation among States Parties to the Protocol and to the Convention with respect to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

Article IV
Scope

~~This Protocol applies to all classes of commercially traded firearms, ammunition and other related materials but not to international transactions or transfers for purposes of national security.~~

(ii) Without a licence from a competent governmental authority of the State Party where the manufacture or assembly takes place; or

(iii) Without marking the firearms at the time of manufacturing;

(d) "Illicit trafficking": the import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition, **explosives** and other related materials from or across the territory of one State Party to that of another State Party, if any one of the States Parties concerned does not authorize it;

(e) "Other related materials": any component, parts or replacement parts of a firearm or an accessory that can be attached to a firearm;

(f) "Explosives": any substance or article that is made, manufactured or used to produce an explosion, detonation or propulsive or pyrotechnic effect, except:

(i) Substances and articles that are not in and of themselves explosives; or

(ii) Substances and articles listed in the annex to this Protocol.

Article III
Purpose

The purpose of this Protocol is:

(a) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials;

(b) To promote and facilitate cooperation and exchange of information and experience among States Parties to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials.

Article IV
Sovereignty

1. States Parties shall fulfil the obligations under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. A State Party shall not undertake in the territory of another State Party the exercise of jurisdiction and performance of functions that are exclusively reserved to the authorities of that other State Party by its domestic law.

Article V
Criminalization

Article V
Legislative measures

1. Each State Party shall adopt such necessary legislative or other measures as may be necessary to establish as offences under its domestic law, ~~when committed intentionally~~:

1. States Parties that have not done so shall adopt the necessary legislative or other measures to establish as **criminal** offences under their domestic law:

(a) Illicit trafficking in firearms, ammunition and other related materials; and

(a) Illicit trafficking in firearms, ammunition, **explosives** and other related materials;

(b) Illicit manufacturing of firearms, ammunition and other related materials.

(b) Illicit manufacturing of firearms, ammunition, **explosives** and other related materials.

2. Subject to the constitutional principles and basic concepts of its legal system, each State Party shall also establish as offences participation in the offences established pursuant to the foregoing paragraph, association with or conspiracy to commit such offences, attempts to commit such offences and aiding, abetting, facilitating and counselling the commission of such offences.

2. Subject to the constitutional principles and basic concepts of its legal system, each State Party shall also establish as offences participation in the offences established pursuant to the foregoing paragraph, association with or conspiracy to commit such offences, attempts to commit such offences and aiding, abetting, facilitating and counselling the commission of such offences.

Article VI
Jurisdiction

Article VI
Jurisdiction

Each State Party shall adopt such measures as may be necessary to establish its jurisdiction, in accordance with article 9 of the Convention, over the offences it has established pursuant to this Protocol.

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences it has established **in accordance with this Protocol when the offence in question is committed in its territory.**

2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with this Convention when the offence is committed by one of its nationals or by a person who habitually resides in its territory.

3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with this Convention when the alleged criminal is present in its territory and it does not extradite such person to another country on the ground of the nationality of the alleged criminal.

4. This Protocol does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law.

Article VII
Confiscation or forfeiture

1. States Parties shall undertake to confiscate or forfeit firearms, ammunition and other related materials that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.

2. States Parties shall adopt the necessary measures to ensure that all firearms, ammunition and other related materials seized, confiscated or forfeited as a result of illicit manufacturing or trafficking do not fall into the hands of private individuals or businesses through auction, sale or other disposal.

Article VII
Confiscation or forfeiture

1. States Parties shall undertake to confiscate or forfeit firearms, ammunition, **explosives** and other related materials that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.

2. States Parties shall adopt the necessary measures to ensure that all firearms, ammunition, **explosives** and other related materials seized, confiscated or forfeited as a result of illicit manufacturing or trafficking do not fall into the hands of private individuals or businesses through auction, sale or other disposal.

Article VIII
Record-keeping

1. Each State Party shall maintain for not less than ten years the information necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable it to comply with its obligations.

2. ~~Records shall be kept for a period of not less than ten years after the last transaction effected under a particular certificate.~~ State Parties shall identify to one another the agencies responsible for record-keeping.

~~3. States Parties shall use their best efforts to computerize their records for the purposes of enhancing one another's access to such information.~~

Article VIII
Record-keeping

1. Each State Party shall maintain for not less than **five** years the information necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable it to comply with its obligations **under this Protocol**.

2. State Parties shall identify to one another the agencies responsible for record-keeping.

Article IX
Marking of firearms

1. For the purposes of identifying and tracing firearms, States Parties shall:

Article IX
Marking of firearms

1. For the purposes of identification and tracing of the firearms **referred to in subparagraph (b) (i) of article II** States Parties shall:

(a) Require, at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its serial number;

(b) Require appropriate markings on each imported firearm permitting the identification of the importer's name and address; and

(c) Require the appropriate marking of any firearm confiscated or forfeited pursuant to article VII of this Protocol that is retained for official use.

2. States Parties shall encourage the firearm manufacturing industry to develop measures against the removal of markings.

~~*Article X*~~
~~*Preventing the reactivating of deactivated firearms*~~

~~States Parties that have not already done so shall consider taking the necessary measures to prevent the reactivating of deactivated firearms, including through criminalization, if appropriate.~~

Article XI
General requirements for export, import and transit licensing or authorization systems

1. States Parties shall establish and maintain an effective system of export, import and international transit licensing or authorization for transfers of firearms, ammunition and other related materials.

2. States Parties shall not permit the transit of firearms, ammunition and other related materials until the receiving States Parties issue the corresponding licences or authorizations.

3. States Parties, before releasing shipments of firearms, ammunition and other related materials for export, shall ensure that the importing and transit States have issued the necessary licences or authorizations.

4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition and other related materials.

(a) Require, at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its serial number;

(b) Require appropriate markings on each imported firearm permitting the identification of the importer's name and address; and

(c) Require the appropriate marking of any firearm confiscated or forfeited pursuant to article VII of this Protocol that is retained for official use.

2. The firearms referred to in sub-paragraph (b) (i) of article II should be marked appropriately at the time of manufacture, if possible.

3. States Parties shall encourage the firearm manufacturing industry to develop measures against the removal of markings.

Article X
General requirements for export, import and transit licensing or authorization systems

1. States Parties shall establish and maintain an effective system of export, import and international transit licensing or authorization for transfers of firearms, ammunition, **explosives** and other related materials.

2. States Parties shall not permit the transit of firearms, ammunition, **explosives** and other related materials until the receiving States Parties issue the corresponding licences or authorizations.

3. States Parties, before releasing shipments of firearms, ammunition, **explosives** and other related materials for export, shall ensure that the importing and transit States have issued the necessary licences or authorizations.

4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition, **explosives** and other related materials.

Article XII
Security measures

States Parties, in an effort to eliminate loss or diversion of firearms, ammunition and other related materials, shall undertake to adopt the necessary measures to ensure the security of firearms, ammunition and other related materials imported into, exported from or in transit through their respective territories.

Article XIII
Strengthening of controls at points through which exports pass

Each State Party shall adopt such measures as may be necessary to detect and prevent illicit trafficking in firearms, ammunition and other related materials between its territory and the territories of other States Parties, by strengthening controls at points through which exports pass.

Article XIV
Exchange of information

1. Without prejudice to articles 19 and 20 of the Convention, States Parties shall exchange among themselves, in conformity with their respective domestic laws and treaties applicable to them, relevant information on matters such as:

(a) Authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, ammunition and other related materials;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition and other related materials; and ways of detecting such illicit manufacturing or trafficking;

(c) Routes customarily used by criminal organizations engaged in illicit trafficking in firearms, ammunition and other related materials;

(d) Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials; and

(e) Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

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(d) Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials; and

(e) Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials.

2. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance one another's ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and prosecute those involved in those illicit activities.

3. States Parties shall cooperate in the tracing of firearms, ammunition and other related materials that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt and accurate responses to requests for assistance in tracing such firearms, ammunition and other related materials.

Article XV
Cooperation

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

2. States Parties shall identify a national body or a single point of contact to act as liaison between States Parties ~~on matters relating to this Protocol~~.

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2. States Parties shall identify a national body or a single point of contact to act as liaison between States Parties **for the purposes of cooperation and information exchange**.

3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters and commercial carriers of firearms, ammunition, explosives and other related materials to prevent and detect the foregoing illegal activities.

Article XV
Establishment of a focal point

1. In order to attain the objectives of this Protocol, the States Parties shall establish a focal point within the Secretariat of the United Nations responsible for:

(a) Promoting the exchange of information provided for under this Protocol;

(b) Facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties, including relevant international instruments or agreements on matters related to this Protocol;

(c) Encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, ammunition, explosives and other related materials;

(d) Promoting training and exchange of knowledge and experience among States Parties and technical assistance between States Parties and relevant international organizations, as well as research on matters related to this Protocol;

(e) Requesting from non-party States, when appropriate, information on the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials;

(f) Promoting measures to facilitate the application of this Protocol;

(g) Establishing a mechanism to monitor compliance with Security Council embargoes on arms transfers;

(h) Establishing a database for consultation among States Parties on illicit manufacture of and trafficking in firearms, ammunition, explosives and other related materials, including those seized, confiscated or forfeited;

(i) Disseminating information to the general public on matters related to this Protocol;

(j) Coordinating international efforts to combat the illicit manufacture of and trafficking in firearms, ammunition, explosives and other related materials, in particular among relevant international organizations.

Article XVI
Exchange of experiences and training

1. States Parties shall cooperate in formulating programmes for the exchange of experiences and training among competent officials and shall provide each other assistance to facilitate access to equipment or technology proven to be effective in efforts to implement this Protocol.

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2. States Parties shall cooperate with each other and with competent international organizations, as appropriate, to ensure that there is adequate training of personnel in their territories to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials. The subjects covered in such training shall include the following:

(a) Identification and tracing of firearms, ammunition and other related materials;

(b) Gathering of intelligence, especially concerning the identification of persons engaged in the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, the methods of shipment used and the means of concealment used; and

(c) Improvement of the efficiency of personnel responsible for searching for and detecting, at conventional and non-conventional points of entry and exit, illicitly trafficked firearms, ammunition and other related materials.

Article XVII
Confidentiality

Subject to the obligations imposed by its constitution or any international agreements, each State Party shall guarantee the confidentiality of any information that it receives, from another State Party, ~~including proprietary information pertaining to commercial transactions~~, if requested to do so by the State Party providing the information. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.

Article XVIII
Technical assistance

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, including technical assistance in those matters identified in article 18 of the Convention.

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Article XX
Mutual legal assistance

[Discussion of this article should be deferred at present. The umbrella Convention will probably contain an article concerning this general subject matter. When negotiations of those provisions have advanced further, it will be possible to determine whether provision, unique to firearm trafficking, must be inserted into the Protocol or whether the more general provisions of the umbrella Convention will suffice.]

Article XXI
Extradition

[Discussion of this article should be deferred at present. The umbrella Convention will probably contain an article concerning this general subject matter. When negotiations of those provisions have advanced further, it will be possible to determine whether provision, unique to firearm trafficking, must be inserted into the Protocol or whether the more general provisions of the umbrella Convention will suffice.]

Article XXII
Reservations

States Parties may, at the time of adoption, signature or ratification, make reservations to this Protocol, provided that said reservations are not incompatible with the object and purposes of the Protocol or the Convention and that they concern one or more specific provisions thereof.

Article XXIII
Denunciation

1. This Protocol shall remain in force indefinitely, but any State Party may denounce it. The instrument of denunciation shall be deposited with the Secretariat of the United Nations Organization. After six months from the date of deposit of the instrument of denunciation, the Protocol shall no longer be in force for the denouncing State, but shall remain in force for the other States Parties.

2. The denunciation shall not affect any requests for information or assistance made during the time the Protocol is in force for the denouncing State.

Article XIX
Final clauses

1. This Protocol shall be open for signature by all States from .... at the Headquarters of the United Nations in New York.

2. This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article XXIV
Deposit

The original instrument of this Protocol shall be deposited with the Secretariat of the United Nations for registration and publication. The Secretariat of the United Nations shall notify the Member States of the Organization of the signatures, of the deposits of instruments of ratification and denunciation and of any reservations.

Annex

The term "explosives" does not include compressed gases; flammable liquids; explosive-activated devices, such as air bags and fire extinguishers; propellant-activated devices, such as nail-gun cartridges; consumer fireworks suitable for use by the public and designed primarily to produce visible or audible effects by combustion, that contain pyrotechnic compositions and that do not project or disperse dangerous fragments such as metal, glass or brittle plastic; toy plastic or paper caps for toy pistols; toy propellant devices consisting of small paper or composition tubes or containers containing a small charge or slow-burning propellant powder designed so that they will neither burst nor produce external flame except through the nozzle on functioning; and smoke candles, smoke pots, smoke grenades, smoke signals, signal flares, hand signal devices and Very signal cartridges designed to produce visible effects for signal purposes containing smoke components and no bursting charges.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

Comments on the Canadian draft Firearm Protocol

A. General

1. It should be said at the outset that the draft text provides a solid and useful basis on which future discussions can proceed. Given the tight time-frames anticipated for the United Nations Convention, the relatively advanced state of the draft should allow jurisdictions to focus more readily on the more contentious issues we expect to encounter in concluding the Protocol.

2. As may already be known, the draft text borrows extensively from the provisions contained in the Organization of American States (OAS) Convention against Illicit Firearms Manufacturing/Trafficking. At least one of the OAS provisions (see below), if adopted entirely for the purposes of the United Nations Protocol, would prove difficult from UK perspectives, and our ability to deal effectively with the Canadian delegation should permit us to work through such potential difficulties more readily.

B. Specific comments

Preamble

3. Subparagraph (b) of the Preamble refers to an "increase" in the illicit manufacturing of and trafficking in firearms, yet the nature of evidence suggesting an "increase" may be problematic despite being apparent. As such, it may be vulnerable to objections from other jurisdictions. Alternatively, perhaps "occurrence" or "indications of an increase" might be more appropriate language.

Article II (Definitions)

"Ammunition"

4. Currently, not all component parts of ammunition are controlled under UK firearm legislation. Blank ammunition is also exempt. It is possible therefore for someone to manufacture and trade in cartridge cases, for example, without the need for authorization. The reasoning behind this is that certain components are not dangerous in themselves and there is no danger to public safety in allowing persons to manufacture such items. To take account of this situation, the UK suggests amending the definition of ammunition in the following way:

> "Ammunition": the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in any firearm provided those components are themselves subject to authorization in the respective State Party."

"Firearms"

5. UK representatives believe there will be many divergent practices in relation to the controls placed on antique firearms and air weapons and that this needs to be addressed in the definition. Given that such weapons are unlikely to feature heavily in the commission of crimes, the UK would favour amending the definition of firearms in the following way:

"Firearms": any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, excluding air weapons and antique firearms that are not subject to authorization in the respective State Party".

"Illicit manufacturing"

6. In subparagraph (d) (ii) of the definition, the UK would favour the following wording to take account of the fact that a government-issued licence may not be the form of authority issued in each State:

(ii) Without an appropriate authority from the State Party where the manufacture or assembly takes place;"

"Other related materials"

7. The question of what constitutes a component part or a spare part has been a contentious issue for a long time in the UK. It is generally accepted that certain component parts, such as small screws or springs that are commonly used other than in firearms, do not need to be controlled. Arguably, however, they could be essential to their operation, in particular if they held everything together. Equally, a firing pin is essential but could be easily replaced by a common item such as a nail.

8. This definition will need to be carefully considered, but at present we would favour omission of the words "essential to its operation". There may also be difficulties with reference to "an accessory that can be attached to a firearm and that enhances its lethality", given that bayonets, presumably, would be captured by this language. As an alternative, it may be necessary to adopt a set of references that are much more specific to the of attachments known to exist. For example, a reference to silencers, if we are looking to include them, could be "... any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon".

Article IV (Scope)

9. UK officials question whether the inclusion of the words "commercially traded" to describe the classes of firearms covered by the Protocol may be too restrictive.

10. If the intention is simply to contrast these types of firearms with what follows in this article (i.e. "international transactions or transfers for purposes of national security"), then perhaps the following wording could be substituted:

"This Protocol applies to all classes of firearm, including those which are commercially traded, and all classes of ammunition and related materials, but not to State-to-State transactions or transfers for the purpose of national security".

Article V (Criminalization)

11. The UK firmly supports the criminalization of the offences identified in the Protocol, and would like to see consideration given to the creation of a new offence to cover the "brokering" of illicit firearm deals abroad by citizens operating from within their own countries. The wording of such an offence could mirror that currently used in section 20 of the UK's Misuse of Drugs Act 1971:

"A person commits an offence if in the United Kingdom he assists in or induces the commission in any place outside the United Kingdom of an offence punishable under the provisions of a corresponding law in force in that place".

Article VI (Jurisdiction)

12. Similarly, this provision could be extended to include a provision allowing State Parties to maintain jurisdiction over their nationals who commit no offence in their home country, but engage in illicit arms trafficking abroad. The wording of such an offence could mirror that now used in section 7 of the UK's Sex Offenders Act, 1997:

"Any act done by a person in a country or territory outside the United Kingdom which

"(a) constituted an offence under the law in force in that country or territory; and

"(b) would constitute a [firearms] offence to which this section applies if it had been done in the United Kingdom,

shall constitute that [firearms] offence under the law of the United Kingdom.

"No proceedings shall by virtue of this section be brought against any person unless he was at the commencement of this section, or has subsequently become, a British citizen or resident in the United Kingdom."

Article VIII (Record-keeping)

13. Reference in paragraph 2 to the "last transaction effected under a particular certificate" requires further explanation and clarification. The need to keep "the information necessary to trace and identify illicitly manufactured ... firearms" has already been recorded in paragraph 1 but, presumably, the provisions contained in the first sentence of paragraph 2 serve some additional purpose. The UK endorses any effort to create a computerized database and more ready access to firearm information and intelligence by State Parties.

Article IX (Marking)

14. As described above, UK officials fully agree in principle with the inclusion of a provision for the marking of firearms, but note that the proposed wording will require further refinement. While we would wish to consider in more detail how and whether specific text requires amendment, the following preliminary observation are offered:

(a) The provision to require appropriate marking "at the time of manufacture" may, subject to further discussion, need additional reference to "year of manufacture". Clarification of "place of manufacture" might also be contemplated in terms of the degree of specificity intended (i.e. whether the marking to be placed on a weapon would refer to the country or—alternatively—to the locale where it is manufactured);

(b) The wording of the draft Protocol for "markings on imported firearms" is taken directly from the OAS Convention. In this respect, it differs from the text that was previously decided for the G-8 Action Plan, which read "... following importation for the purpose of commercial sale within the importing country, or permanent private importation, so that the resource of the firearms can be traced". Previous discussions of this issue have highlighted some of the differences in importation practices that exist in

some jurisdictions (e.g. the United States). These practices in the UK make it imperative that the wording used in the G-8 Action Plan be retained for the Protocol.

Article X (Reactivation)

15. The wording used in the Protocol makes little attempt to address the problem posed by varying deactivation standards. Jurisdictions may wish, alternatively, to identify and agree to a certain standard in the text of the Protocol instead of simply committing to "considering taking the necessary measures to prevent the reactivating of deactivated weapons".

Article XIII (Controls at export points)

16. There would appear to be some contradiction in requiring State Parties to adopt "such measures as may be necessary" to detect and prevent trafficking between jurisdictions, and the more prescriptive phrase, "by strengthening controls at points through which exports pass".

Article XIX (Final clauses)

17. It should be noted that the relationship between the Protocol and the United Nations Convention on Transnational Organized Crime will require further elaboration at an appropriate time (i.e. when more details about the Convention become known). For example, do jurisdictions need to be party to the Convention before they can be party to the Protocol? Also, there is no provision for entering into false denunciation or accession reservations.

C. Conclusion

18. In addition to these remarks, we continue to explore the possibilities of the UK hosting one of the workshops proposed by Canadian officials as part of the draft work plan prepared for the protocol. We are actively pursuing this possibility, but do not expect to be in a position to provide a more definitive answer on this matter for some time.

United States of America

[Original: English]

Comments on the Canadian draft firearm protocol

Article II (Definitions)

Paragraph 5, "Illicit trafficking"

1. The draft criminalizes the failure to mark firearms at the time of manufacture by including such an offence in the definition of "illicit manufacturing".

However, by not including in the definition either the failure to mark imported firearms or the obliteration of serial numbers, the draft fails to criminalize those offences. We recommend that importing firearms without providing the appropriate markings and obliterating serial numbers be added to the definition of illicit "trafficking":

"5. 'Illicit trafficking':

"(a) The import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition and other related materials from or across the territory of one State Party to that of another State Party, if any one of the States Parties concerned does not authorize it; or

"(b) The import of firearms without marking at the time of importation; or

"(c) The obliteration, removal or alteration of the serial number on a firearm."

Paragraph 6, "Other related materials"

2. The draft definition has two parts: (a) parts and components that are essential to the firearm (essentially an Inter-American Drug Abuse Control Commission (CICAD) concept); and (b) parts and components that "enhance the lethality" of the firearm. The draft definition has two problems. Firstly, the term "enhance the lethality" is highly ambiguous. If the intent of that phrase is to include such items as scopes and silencers, it is not at all clear that it achieves that goal. In fact, a reasonable argument could be made that a firearm's lethality is strictly defined by its calibre. Under such an interpretation, virtually nothing would fall under that part of the definition. Secondly, limiting the definition to only those parts which are "essential" to the functioning of the firearm is overly broad. Arguably, virtually all parts—including stocks, triggers and barrels—are non-essential to the firearm's ability to expel a projectile. Consequently, we recommend the following definition:

"6. 'Other related materials': any component, part or replacement part of a firearm."

Article III (Purpose)

3. This paragraph includes only one half of the purpose articulated in article II of the Organization of American States (OAS) Convention. It includes only the promotion and facilitation of cooperation with respect to illicit firearm trafficking. It omits the purpose of preventing, combating and eradicating illicit firearm trafficking. There does not appear to be any reason for such an omission. Consequently, we recommend that the following be added as a second paragraph of the Protocol:

"To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials."

Article IV (Scope)

4. The term "commercially traded" is unnecessarily ambiguous. This Protocol should apply to all firearm transactions except for certain enumerated exceptions, such as State-to-State transactions.

5. Consequently, we propose the following language for article IV:

"This Convention applies to all classes of firearms, ammunition and other related materials, except that it does not apply to State-to-State transactions or to transactions for purposes of national security."

Article V (Criminalization)

6. This article is narrower than its OAS counterpart by requiring only the criminalization of "intentional" offences related to illicit manufacturing and trafficking. This is also narrower than our own law, which criminalizes knowing and wilful violations. The term "intentionally" should be removed from this article.

7. Additionally, this Protocol provides the opportunity to require the criminalization of violations of United Nations arms embargoes. Such an obligation could be included in this article or placed in its own article as follows:

"State Parties that have not yet already done so shall adopt the necessary legislative or other measures to sanction criminally, civilly or administratively under their domestic law the violation of arms embargoes mandated by the Security Council."

Article VIII (Record-keeping)

Paragraph 2

8. This paragraph refers to records being kept for not less than 10 years after the last transaction effected under a particular certificate. Firstly, we recommend that this obligation be reduced to five years, as it is under CICAD. Secondly, we recommend that the term "particular certificate" be replaced with the term "licence or authorization".

Paragraph 3

9. This paragraph is not in the OAS Convention. Further, it may be overburdensome for some States Parties. Therefore, we recommend that this paragraph be removed.

Article IX (Marking of firearms)

Paragraph 1 (b)

10. Though not currently required by the OAS Convention, we consider it might be helpful to add a provision requiring the marking of an individual serial number if the firearm does not bear one at the time of import. Consequently, this paragraph would read as follows:

"(b) Require appropriate markings on imported firearms permitting the identification of the importer's name and address, and an individual serial number if the firearm does not bear one at the time of import; and"

Article XI (General requirements for export, import and transit licence or authorization systems)

11. This article is based on the OAS Convention. However, this Protocol represents an opportunity to go beyond OAS in this area in two important respects. Firstly, it provides the opportunity to institute a system in which the export, import and in-transit licences or authorizations are consistent, contain parallel information and are issued in the proper order, that is, import then in-transit (where relevant) then export. Secondly, this Protocol provides the opportunity to require written approval from the exporting country prior to re-export by the importing country. The following is the draft of an alternative article XI that would accomplish both of these goals:

"Article XI

"1. States Parties shall establish or maintain an effective system of export, import and international transit licences or authorizations for transfers of firearms, ammunition and other related materials.

"2. States Parties, before issuing an export licence or authorization for the shipment of firearms, ammunition and other related materials for export, shall verify that the importing and in-transit countries have issued licences or authorizations. Each export, import and in-transit licence or authorization shall contain the same information, which at a minimum shall identify the country and date of issuance, the date of expiration, the country of export, the country of import, the final recipient and the description and quantity of the articles.

"3. States Parties, before issuing an in-transit licence or authorization and permitting the transit of firearms, ammunition and other related materials, shall verify that the receiving State Party has issued the corresponding import licence or authorization.

"4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition and other related materials.

"5. Written approval from the exporting country must be obtained before a State Party may authorize the re-export, retransfer, transshipment or other disposition of firearms to any end user, end use or destination other than as stated on the export licence or authorization."

* * *

"*Article* ... [proposed new article]

"*Registration and licensing of brokers*

"Any person, wherever located, who engages in the business of brokering activities with respect to the manufacture, export, import or transfer of any firearms is required to register with and receive approval from his/her country of nationality.

"*Article* ... [proposed new article]

"*Establishment of a focal point*

"1. In order to attain the objectives of this Protocol, the States Parties shall establish a focal point within [____] responsible for:

"(a) Promoting the exchange of information contemplated under this Protocol;

"(b) Facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties, including relevant international instruments or agreements on matters related to this Protocol;

"(c) Encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, ammunition and other related materials;

"(d) Promoting training and exchange of knowledge and experience among States Parties and technical assistance between States Parties and relevant international organizations, as well as research on matters related to this Protocol;

"(e) Requesting from non-party States, when appropriate, information on the illicit manufacturing of and trafficking in firearms, ammunition and other related materials;

"(f) Promoting measures to facilitate the application of this Protocol;

"(g) Establishing a mechanism to monitor compliance with Security Council embargoes on arms transfers;

"(h) Establishing a database for consultation among States Parties on illicit manufacturing of and trafficking in firearms, ammunition and other related materials;

"(i) Disseminating information to the general public on matters related to this Protocol;

"(j) Coordinating international efforts to combat the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, in particular among relevant international organizations."

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First session
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PROPOSALS AND CONTRIBUTIONS RECEIVED FROM GOVERNMENTS

Corrigendum

Page 20, paragraph 8, line 5

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Page 22, paragraph 17, line 4

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COMMENTS AND PROPOSALS RECEIVED FROM GOVERNMENTS

CONTENTS

		Page
I.	INTRODUCTION	1
II.	COMMENTS AND PROPOSALS RECEIVED	2
	Netherlands	2

I. INTRODUCTION

The Secretary-General has the honour to bring to the attention of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime the comments and proposals of the Government of Netherlands that relate to the draft United Nations Convention against Transnational Organized Crime.

V.98-58200 (E)

II. COMMENTS AND PROPOSALS RECEIVED

Netherlands

[Original: English]

Draft United Nations Convention against Transnational Organized Crime

Article 22
Prevention

1. State Parties shall to the extent possible consider taking social, legal or administrative steps to reduce existing or future opportunities for criminal organizations to acquire illegal gains in markets such as illegal trafficking in cars, firearms, women and minors and the smuggling of aliens, as well as to reduce opportunities to recruit new members among groups in the population that are at risk.

2. State Parties shall consider taking steps to assist persons convicted for organized criminal activities with their reintegration into society, for example, through vocational education and training.

3. State Parties shall consider undertaking national and international pilot projects for the prevention of transnational organized crime and exchange information about the outcome with relevant authorities in other countries and international organizations.

4. State Parties shall consider setting up public-private partnerships with other relevant parties to reduce opportunities for transnational criminal activities such as illegal trafficking in firearms and cars, corruption and computer-related crime.

5. State Parties shall consider the development of standards, including professional codes of conduct, and procedures designed to safeguard the integrity of public and private organizations and relevant professions such as lawyers, notaries public, tax consultants and accountants.

6. State Parties shall consider preventing the misuse of legal persons by organized crime through:

(a) The collection and storage of information on legal persons and the natural persons involved in their establishment, management and funding;

(b) The promotion of the deprivation of the right of persons convicted for organized criminal activities to act as directors of legal persons by criminal or administrative measures;

(c) The establishment of national registrations of persons disqualified as directors of legal companies;

(d) The exchange of information as referred to under subparagraphs (a) and (c) above with legitimate authorities in other countries and international organizations.

7. State Parties shall consider excluding from participation in tender procedures conducted by State applicants who have been convicted for offences connected with organized crime and denying subsidies or licences to such applicants.

Article 22 bis

1. State Parties shall collaborate with each other and relevant international organizations in promoting and developing the activities listed under article 22, in particular through the exchange of information on trends in organized crime and on best practices for the prevention of organized crime.

Add to article 23

The Secretary-General shall, with the assistance of the State Parties:

(a) Prepare and disseminate a global report on organized crime at regular intervals;

(b) Promote studies of emerging patterns in transnational organized crime and disseminate the findings of the studies;

(c) Promote and facilitate the organization of conferences and expert meetings to further cooperation and the exchange of information aimed at preventing and combating transnational organized crime;

(d) Facilitate, promote and evaluate innovative pilot projects addressing transnational organized crime;

(e) Set up a database with best practices for preventing and combating transnational organized crime;

(f) Establish a network of contact persons from Member States in order to promote the exchange of information on preventing and combating transnational organized crime.

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Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 1-3
Consideration of the additional international legal instrument against trafficking in women and children

Proposals and contributions received from Governments

Addendum

Contents

Page

I. Introduction 2
II. Proposals and contributions received from Governments 2
Australia 2
Australia and Canada 5
Austria 6
Japan 7
Mexico 9
Poland 10

*A/AC.254/10.

V.99-80843

I. Introduction

1. The Secretary-General has the honour to bring to the attention of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime comments and proposals that relate to the draft United Nations Convention against Transnational Organized Crime or the additional international legal instrument against trafficking in women and children. The comments and proposals have been submitted by Governments since the convening of the first session of the Ad Hoc Committee, which was held in Vienna from 19 to 29 January 1999.

2. Any proposals or contributions received subsequently will also be issued as addenda.

II. Proposals and contributions received from Governments

Australia*

[Original: English]

Suggested assumptions and understandings concerning the additional international legal instruments

The following points are submitted for purposes of discussion and consultation. The points are not intended for inclusion as treaty text, although if appropriate points (a)(i) and (ii) could be reflected in the draft Convention:

(a) Instrument prepared as an "optional protocol"

(i) A Party to the Protocol must also be a Party to the Convention;

(ii) A Party to the Convention is not bound by the Protocol unless the Party has expressly accepted the Protocol;

(iii) Except where necessary for convenience of drafting, the Protocol should not duplicate obligations already existing in the Convention;

(iv) The Protocol must be consistent with the Convention. The Protocol should not affect obligations existing under the Convention (although it might add to them for Parties to the Protocol);

[Note. The issue of reservations to the Convention or to the Protocols is a separate matter.]

(v) The Protocol may deal with the following matters, among others:

a. Adoption of special measures not contained in the Convention, relating to particular kinds of criminal activity;

b. Measures with respect to kinds of criminal activity not covered by the Convention for any reason, for example, the organizing, or participating in, a relevant crime by an individual and not necessarily involving an organized criminal group;

* Previously issued as document A/AC.254/L.9.

(vi) As far as practicable, all Protocols should follow a common format, where necessary adopting Convention provisions by reference. Provisions of similar effect should be drafted in the same form;

(b) Instrument prepared as a "non-optional protocol"

This would really be part of the Convention, and would be prepared and have effect accordingly;

(c) Instruments prepared as a separate treaty

Points (a)(i)-(vi) would not apply. However, for the purpose of the current work any instrument designed as a separate treaty would need to be consistent with the Convention, and designed so as to be able to function if a Convention Party was not also a treaty Party, and vice versa.

[Original: English]

Proposals on articles 13, 18 and 18 *bis* of the draft United Nations Convention against Transnational Organized Crime

1. During the first session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, the delegation of Australia undertook to develop proposals regarding the matters presently dealt with in articles 13, 18 and 18 *bis* of the draft United Nations Convention against Transnational Organized Crime.

2. The proposal outlined below with respect to article 13, entitled "Consideration of requests for extradition",[1] would involve deleting that article and adding the following paragraph at the end of article 10:

"Each State Party shall designate, by notification to the Secretary-General, an authority or, when necessary, authorities able to provide initial advice to another State Party in relation to a proposed extradition request, including advice with respect to the applicable procedures, channels and documentary requirements. The notification to the Secretary-General may include any further information that the notifying State Party might consider to be helpful. Designation of an authority for the purposes of this paragraph shall not be taken to affect the designation of competent authorities for the specific purpose of any bilateral extradition treaty or the possibility of initial communication in urgent circumstances through the channels of the International Criminal Police Organization.

3. The proposal outlined below with respect to article 18, entitled "Protection of witnesses and victims", and article 18 *bis*, entitled "Measures to enhance cooperation with law enforcement authorities", would involve replacing those articles with the following three articles:

"Article 18

"Special measures in relation to certain witnesses and informants

"1. States Parties shall adopt, as appropriate within the basic principles of their respective legal systems, measures designed to encourage the giving of relevant testimony and information in relation to the crimes covered by this Convention by persons able to do so.

[1] In the unrevised version of the draft Convention (A/AC.254/4).

"2. Such measures might include:

"(a) Establishing procedures for taking special measures to protect such persons, their relatives and relevant associates against potential retaliation or intimidation, such as, to the extent necessary and feasible, establishing new identities, relocating, and prohibiting disclosure of information about the identity and whereabouts of such persons;

"(b) Establishing procedures for giving evidence by electronic or other means so as to reduce the possibility of retaliation or intimidation, but not so as to prejudice the rights of the defence;

"(c) Giving assurances or conditional assurances, in special cases, that such persons will not be prosecuted for specified past conduct, either by formally granting immunity or indemnity or by giving assurances or undertakings by competent authorities;

"(d) Offering the possibility of reduced punishment of such persons, in special cases, through the proper exercise of any available discretion by the competent authority, either by charging less serious offences, recommending lower penalties or exercising powers to remit or reduce an imposed sentence;

"(e) Providing rewards.

"3. A State Party shall, on request, consider entering into arrangements with another State:

"(a) To facilitate the relocation of protected witnesses or informants and their relatives and the protection of their identities;

"(b) To receive from the authorities of one State the kind of assurances referred to in paragraph 2 (c) of this article for the purpose of obtaining the testimony of a witness from another State.

"*Article 18* bis

"*Protection of persons involved in investigations and prosecutions*

"States Parties shall consider taking appropriate measures to protect the safety of persons involved in the detection, investigation and prosecution of the crimes covered by this Convention, including, where necessary and appropriate, informants, witnesses, victims, investigators, prosecutors, advocates, magistrates, judges and court officials.

"*Article 18* ter

"*Victims*

"States Parties shall give consideration to the adoption of measures to be applied where there are identifiable victims of a crime covered by this Convention. Such measures might include:

"(a) Provision for the ordering or encouraging of restitution by offenders to victims;

"(b) Provision for the views and concerns of victims to be presented and considered at appropriate stages of the criminal proceedings, in a manner not prejudicial to the rights of the defence;

"(c) Other assistance to victims as might be appropriate in the particular case."

Australia and Canada

[Original: English]

Comments on the draft Protocol on Trafficking in Women and Children submitted by Argentina and the United States of America

We recognize an important distinction between the subject matter covered by an optional protocol on trafficking in human beings and that covered by an optional protocol on the smuggling of migrants.

The phenomenon of trafficking includes additional forms of criminal behaviour that need to be addressed, including:

(a) Coercion, fraud, kidnapping, and "sale" prior to the movement of a person across international borders;

(b) Criminal exploitation in the country of destination, including sexual exploitation such as forced prostitution or child pornography;

(c) Forced labour, having due regard to existing international definitions such as that contained in Forced Labour Convention, 1930, of the International Labour Organization (ILO). In that connection, we have an open mind as to the expansion of the protocol beyond women and children provided that emphasis is maintained in respect of the special circumstances of both women and children;

(d) Conduct in broker countries.

With respect to issues pertaining to the illegal transport, movement and entry of trafficked persons, we should consider the inclusion of relevant provisions for the control of smuggling of migrants.

The heinous exploitation of victims of trafficking requires special measures to address their needs, as otherwise prosecution would be difficult and could lead to re-victimization. Such measures should include:

(a) Consideration by the receiving State of humanitarian and compassionate factors in the determination of the victim's status in that State;

(b) Facilitation of the return of the victim where returning the victim is not inconsistent with other international legal obligations;

(c) Assistance and protection for victims who are witnesses in criminal proceedings against traffickers, including measures that bear in mind the sensitivities surrounding sexual exploitation. In that regard, there could be recourse to protective measures outlined in the rules of procedure and evidence of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991;

(d) Victim rehabilitation in either the country of origin or the receiving country, as applicable.

We would wish to ensure that all provisions are consistent with the international human rights instruments, including the Convention on the Rights of the Child (annexed to General Assembly resolution 44/25 of 20 November 1989). We would recommend inclusion of provisions on the human rights of detainees and a savings clause concerning human rights instruments and the Convention relating to the Status of Refugees,[1] as submitted by Canada in respect to the migrant smuggling protocol.

Law enforcement and cooperation provisions (e.g. technical assistance, asset seizure, information exchanges) should be included only insofar as they go beyond those contained in the main Convention.

The drafters should take into account work being done in other international forums (the proposed ILO convention concerning the prohibition and immediate elimination of the worst forms of child labour and the Commission of Human Rights working group on an optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography).

Austria

[Original: English]

Non-paper on article 23 of the draft United Nations Convention against Transnational Organized Crime

1. Article 23, option 1, seeks to set up the Commission on Crime Prevention and Criminal Justice as the body to oversee the implementation of the Convention.

2. Austria does not believe that this is desirable or practical:

(a) The Commission on Crime Prevention and Criminal Justice is a functional commission of the Economic and Social Council, established by the Council in its resolution 1992/1, with limited membership (40 members elected for a term of three years: 12 from Africa, 9 from Asia, 4 from Eastern Europe, 8 from Latin America and the Caribbean and 7 from Western European and Other States) and with a limited mandate;

(b) The membership of the Commission will not coincide with the States Parties to the Convention;

(c) Decisions of the Commission are not legally binding; it would seem contrary to all institutional logic for the Commission, whose membership includes some States that may choose not to be bound by the Convention, to oversee the compliance with and/or implementation of the Convention by States Parties to the Convention.

3. Therefore, provisions should be made to ensure that only States that have chosen to be bound by the Convention monitor compliance with or implementation of the Convention.

4 This means that the Convention should set up its own conference of the Parties to the Convention, in keeping with well-established practice.

5. Article 23, option 2, is a step in that direction. Subparagraphs 2 (a) and (b) are very far-reaching, though. It might be more prudent to leave it up to the Conference of the

[1] United Nations, *Treaty Series*, vol. 189, No. 2545.

Parties to the Convention to determine its own goals and working methods. Furthermore, paragraph 5 is impractical (since the voluntary contributions cannot be foreseen with certainty, there is no way to calculate how much must be paid by assessed contributions; hence, there is no way to bill the States in time etc.).

6. What was totally missing in the text laid on the table was the role of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention.

7. In Austria's view, the Centre for International Crime Prevention would have several important functions:

(a) It should act as the secretariat of the Convention and its Protocols and should service the meetings of the Conference of the Parties to the Convention; that would also allow maximum synergy between the work of the Crime Commission and the work of the Conference;

(b) The Centre for International Crime Prevention would also be the entity to carry out the activities proposed by the Netherlands in document A/AC.254/L.3 under the heading "Additional paragraph of article 23", which Austria supports, and any other analytical work and technical assistance that might be decided upon in the context of the Convention.

Japan

[Original: English]

Proposals on article 3 (option 2) of the main Convention as presented in document A/AC.254/L.1/Add.2

1. Japan would like to present proposals on article 3, which is one of the most important and challenging articles in the draft Convention: important because this article, by imposing legal obligations on the contracting Parties to criminalize participation in a criminal organization, will provide effective measures in combating organized crime; and challenging because the introduction of the offence of participation is closely related to the basic principles of the domestic legal system of each State.

2. The difficulty in introducing an obligation to criminalize the act of participation can be seen in the two options to article 3 themselves. Both provide two options in criminalizing the conduct, one based on the notion of conspiracy in the common law system and the other based on the notion of participation found in the civil law system.

3. However, in order to make this Convention as global as possible, the obligation stipulated in this article should also be acceptable to other legal systems in the world. In addition, this article should have some nexus to the notion of "organized crime" or "organized criminal group" to be defined in article 2 and article 2 *bis*.

4. This proposal is made in the light of the above consideration and based on option 2 of article 3, which was proposed by the United Kingdom of Great Britain and Northern Ireland. Japan believes that the revisions of option 2 presented below are essential and minimum requirements for the obligation in this article to be acceptable to other legal systems in the world.

5. Subparagraph 1 (b) of article 3 introduces a legal obligation to criminalize the act of "participation". As stated above, the criminalization of "participation" is closely related

to the basic principles of the domestic legal system of each State. For example, under the basic principles of Japanese criminal law, certain acts are punishable only when the crime in question is actually committed or attempted, and conspiracy or preparatory acts are punishable only in certain grave crimes. Thus, it is inconsistent with our legal principle to criminalize the acts of conspiracy and preparation of all serious crimes. Furthermore, our legal system does not have any provision which criminalizes acts of participation in certain criminal groups without any relevance to the commission of a concrete crime. Therefore, the obligation to criminalize the acts of "participation" should be realized within the framework of the fundamental principles of the domestic legal system.

6. Thus we propose to insert the phrase "Subject to the fundamental principles of its domestic legal system" between subparagraphs 1 (a) and (b) of article 3.

7. Subparagraph 1 (b) (i) of article 3 refers to the criminalization of "conspiracy" to commit a "serious crime", which is defined in subparagraph (b) of article 2 *bis* as conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least [...] years. Since the scope of this Convention should include some element related to "organized criminal activity", there should be some limitation to this provision in order to make it relevant to such an element. For the time being, such an element could be found in paragraph 1 of article 2 of the draft Convention, i.e. "serious crime involving an organized criminal group as defined in article 2 *bis*" as well as in subparagraph 1 (a) of article 3.

8. Thus, we proposed to insert the phrase "involving an organized criminal group" after the phrase "a serious crime" in the first line of the English text in subparagraph 1 (b) (i) of article 3, with the possibility of changing the phrase in accordance with the future development in the drafting of paragraph 1 of article 2.

9. Our basic position is that the notion "involving an organized criminal group" should mean activities conducted as part of the activities of a group having as its aim the commission of a serious offence and utilizing the structure of such a group.

10. Subparagraphs 1 (b) (i) and (ii) are drafted so as to introduce offences within the framework of either the common law system or the civil law system. In order to make this Convention globally acceptable, we believe that a third option, to criminalize the acts of "participation", should be introduced, taking into account the fact that the legal systems in the world are not limited to these two systems.

11. Thus, we propose, as a basis for discussion, to add the following new subparagraph to subparagraph 1 (b) of article 3:

> "(iii) Participation in acts of an organized criminal group which has the aim of committing a serious crime, in the knowledge that the person's participation will contribute to the achievement of the crime."

12. Accordingly, we proposed to change the first three words in the chapeau of subparagraph 1 (b) from "Either or both" to "At least one".

Mexico*

[Original: English and Spanish]

Proposals on articles 1-3 of the draft United Nations Convention against Transnational Organized Crime

Article 1

Statement of objectives

The purpose of this Convention is to promote cooperation among the States Parties so that they can prevent and combat transnational organized crime more effectively.

Article 2

Scope of application

This Convention shall apply to the prevention, investigation and prosecution of crimes of a transnational character committed by criminal organizations and considered as serious in accordance with the national legislation of each State Party, such as:

(a) Illicit production, trafficking and distribution of narcotic drugs or psychotropic substances, as defined in pertinent conventions of the United Nations;

(b) Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, of 1949,[1] including illicit traffic in women and children, and also traffic in organs;

(c) Illicit traffic in migrants;

(d) Counterfeiting currency, as defined in the 1929 International Convention for the Suppression of Counterfeiting Currency;[2]

(e) Illicit traffic in or stealing of cultural objects, as defined in the pertinent conventions;

(f) Stealing of nuclear material, its misuse or threat to misuse, as defined by the 1980 Convention on the Physical Protection of Nuclear Material;[3]

(g) Terrorist acts as defined in the pertinent international conventions;

(h) Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials;

(i) Illicit traffic in or stealing of motor vehicles;

(j) Corruption, as defined in international conventions on the subject;

(k) Illicit access to computer systems and equipment.

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* Previously issued as document A/AC.254/L.8.

[1] Resolution 317 (IV), annex.

[2] League of Nations, *Treaty Series*, vol. 112, No. 2623.

[3] United Nations, *Treaty Series*, vol. 1456, No. 24631.

Article 3

Definitions

It is understood that transnational organized crime exists when three or more persons agree to organize or are organized, on a permanent or recurrent basis, to commit acts that in themselves or when combined with others have as an objective or result the commission of a crime or crimes that are identified in article 2 and over which two or more States Parties have established their jurisdiction, in accordance with article 9 of this Convention.

Poland

[Original: English]

Comments and proposals concerning the relationship between the draft United Nations Convention against Transnational Organized Crime and its Protocols

1. Since there is rather wide acceptance of having additional international instruments annexed to the United Nations Convention against Transnational Organized Crime, the relationship between the Convention and those instruments must be precisely defined in the text of the Convention. Having this in mind, Poland fully supports the suggestions made by Australia (A/AC.254/L.9) on the instruments described in "point (a)" as optional protocols.

2. However, Poland cannot agree to any differentiating between those instruments, especially concerning their relationship with the Convention. In particular, the instruments should never be treated as separate treaties. Such differentiation would weaken the Convention and its practical importance and would be contrary to initial guidelines established for the discussions of the Ad Hoc Committee.

3. Consequently, all the instruments in question, though they may be called "optional protocols", should be treated as instruments annexed to the Convention that form an integral part of the Convention. That should be reflected in the draft Convention in addition to the two proposals by Australia (A/AC.254/L.9) that:

"(i) A Party to the Protocol must also be a Party to the Convention;

(ii) A Party to the Convention is not bound by the Protocol unless the Party has expressly accepted the Protocol."

4. The above-mentioned views could be reflected in the draft Convention by appropriately modifying its provisions dealing with "Signature, ratification, accession and reservations" (article 26) and "Entry into force" (article 27). Poland would like to suggest the consideration of a solution adopted in the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.[1] Following the example of article 4 of the Convention on Certain Conventional Weapons, it would be possible to include in the text of article 26 of the draft Convention (after the necessary adjustment of the title of the article) the following provisions:

[1] United Nations, *Treaty Series*, vol. 1342, No. 22495.

"2. The present Convention is subject to ratification, acceptance, approval or accession. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

"3. Expression of consent to be bound by any of the Protocols annexed to this Convention shall be optional for each State Party to this Convention.

"4. At any time after the deposit of its instrument of ratification, acceptance, approval or accession, a State may notify the depositary of its consent to be bound by any of the annexed Protocols.

"5. Any Protocol by which a State Party is bound shall, for that State Party, form an integral part of this Convention."

5. This option would give States Parties the freedom to choose from among the Protocols those by which they wish to be bound. It would also eliminate the need to have specific provisions in each Protocol that deal with expressing consent to be bound by that Protocol or with its entry into force. Instead, it would be possible to insert in the draft Convention a general, unified formula (following the example of articles 4 and 5 of the Convention on Certain Conventional Weapons) for the notification by States Parties to the Convention of their consent to be bound by the Protocols. Provisions concerning the entry into force of the Convention and its annexed Protocols should be modified accordingly and should be contained only in the text of the Convention itself.

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Consideration of the additional international legal instrument against trafficking in women and children

Proposals and contributions received from Governments

Addendum

Page

II. Proposals and contributions received from Governments 2
Japan 2

*A/AC.254/10.

V.99-81638

II. Proposals and contributions received from Governments

Japan

[Original: English]

Proposal on article 3 of the revised draft United Nations Convention against Transnational Organized Crime*

Article 3
Participation in a criminal organization

1. Each State Party shall establish as criminal offences the following conduct:

(a) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group; and,

subject to the fundamental principles of its domestic legal system,

(b) At least one of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime involving an organized criminal group for any purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement;

(ii) Conduct by a person who intentionally, and with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes active part in:

a. Activities of an organized criminal group referred to in article 2 *bis* of this Convention;

b. Other activities of the group in the knowledge that the person's participation will contribute to the achievement of the above-described criminal aim;

(iii) Participation in acts of an organized criminal group that has the aim of committing a serious crime, in the knowledge that the person's participation will contribute to the achievement of the crime.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

* Incorporating into article 3, option 2, the comments by Japan in A/AC.254/5/Add.3.

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Consideration of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition

Proposals and contributions received from Governments

Addendum

Page

II. Proposals and contributions received from Governments 2

Belgium 2
South Africa 2
Spain 5
Sweden 8

* A/AC.254/12.

II. Proposals and contributions received from Governments

Belgium

[Original: French]

Comment on Article IV (Scope of application) of the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials, Supplementary to the United Nations Convention against Transnational Organized Crime

In view of the subject matter dealt with in this Protocol, the Ad Hoc Committee should give consideration to the insertion of a safeguard clause in respect of international humanitarian law for situations involving armed conflict, in particular domestic armed conflict, within the meaning ascribed to those terms by international humanitarian law.

South Africa

[Original: English]

Comments and proposals on the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials

Overall, the proposed protocol prepared by Canada should be commended for setting out the key steps necessary in beginning to gain control over the illicit manufacturing of firearms and ammunition and the trafficking in those commodities.

The draft protocol follows closely the Inter-American Convention against the Illicit Production of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials of the Organization of American States (OAS).

The OAS Convention was supported by Canada, Mexico and the United States of America, in addition to other countries in the Americas. As the first convention of its kind, it was quickly seen as a prototype for future conventions. The concept of a global convention to curb arms trafficking was mooted in 1998 and the draft protocol is the first practical realization of that suggestion. One concern that has been raised with regard to the protocol is that it will diminish future efforts to elaborate an international instrument on arms trafficking. That is a valid point. Though the idea of elaborating such an international instrument should not be lost, the proposed protocol should not be diminished because of that idea.

Preambular section

It is suggested that a preambular paragraph similar to that in the OAS Convention be inserted between existing preambular paragraphs (e) and (f) on achieving control over firearms in post-conflict situations, given the importance of this in the African context.

The preambular paragraph in the OAS Convention could be modified as follows:

"Stressing the need in peace processes and post-conflict situations, to achieve effective control of firearms, ammunition and other related materials in order to prevent their entry into the illicit market,"

Article I: Relationship with the United Nations Convention against Transnational Organized Crime

In referring to the protocol as a "supplement" to the United Nations Convention against Transnational Organized Crime, its importance is diminished. The article could simply read:

"This Protocol to the Convention ..."

Article II: Definitions

The definitions of ammunition, controlled delivery and illicit manufacturing are accepted as they appear.

"Illicit trafficking"

The United States has suggested that the definition of illicit trafficking be expanded to include the failure to mark imported firearms and the obliteration of serial numbers. Should this amendment be tabled, South Africa will support it.

"Other related material"

It is suggested that the phrases "essential to its operation" and "enhance its lethality" both be removed from this definition. The ability of a part to enhance the lethality of a firearm is extremely subjective, while the definition of what is essential to the operation of a firearm limits what could be covered in the protocol.

Article III: Purpose

The purpose of the protocol as it currently appears does not include what should be the outcome of such a protocol: combating and preventing illicit manufacturing of and trafficking in firearms, ammunition and other related materials. It is suggested that this be added.

Article IV: Scope

It is recommended that the words "commercially traded" be removed from this definition as they unnecessarily limit the scope of the protocol and may create loopholes that could be exploited.

Article V: Criminalization

It is suggested that the words "when committed intentionally" be removed from paragraph 1 of article V.

It has also been suggested that a paragraph be included on United Nations arms embargoes. The United States has proposed the following language:

"States Parties that have not yet already done so shall adopt the necessary legislative or other measures to sanction criminally, civilly or administratively under their domestic law the violation of arms embargoes mandated by the United Nations Security Council."

Article VII: Confiscation or forfeiture

It is suggested that article VII, paragraph 2, be amended to include the destruction or rendering unusable of illicitly manufactured or trafficked firearms.

It is also suggested that article VII be retained, given its specific focus, with necessary modifications in the light of the development of the convention itself.

Article VIII: Record-keeping

While it is recognized that computerized record-keeping is the best method, paragraph 3 of article VIII may meet with resistance. South Africa supports the paragraph as it appears. There should be attempts to ensure the compatibility of computer systems at least within regions.

Article IX: Marking of firearms

It is suggested that paragraph 2 of article IX be modified to include language on "developing effective and inexpensive measures to mark firearms".

Article XI: General requirements for export, import and transit licensing or authorization systems

Currently South Africa meets the requirements mentioned in article XI and has no objections to the language as it appears. However, the United States may propose that two additional paragraphs be added to article XI to systematize the export/import process and to prevent the unauthorized re-export of firearms. South Africa will accept those two amendments, pending the presentation of the proposed text.

Article XIV: Exchange of information

It is suggested that article XIV, paragraph 3, be amended to include a reference to the Interpol Weapons and Explosives Tracking System (IWETS) database as one means of cooperating in the tracing of firearms, ammunition and other related materials.

Other areas for consideration

One flaw in the protocol in its current form is that it offers no facilitating or enforcement mechanism. The OAS Convention calls for the creation of a consultative committee whose responsibilities will include facilitating the exchange of information on legislation and administrative procedures among parties to the Convention and promoting training and technical assistance. While such a committee would probably not work within the United Nations Convention, it is suggested that some type of focal point within the system be considered.

The United States has suggested the creation of a "United Nations transnational firearms transfer centre" to undertake such a function. While that may be unlikely, at least the identification of a focal point within the United Nations system should be made in order to facilitate the flow and exchange of information.

It has also been proposed by the United States that the protocol include an article on registering and licensing brokers. Given that the South African Government is currently considering including legislation on arms brokers, it seems that such an article could be accepted by South Africa, depending on its final language. It also appears that the European Union may table language on arms brokering.

Conclusion

The protocol represents the first international attempt towards reducing the trafficking in and manufacture of illicit firearms. However, the lack of a United Nations focal point must be addressed. It is equally important that the purpose of the protocol be made explicit, as suggested. South Africa intends to actively participate in the further refinement of the protocol and to use its experience and expertise in the eventual implementation of the proposed Convention.

Spain

[Original: Spanish]

Article 4
Money-laundering

Paragraph 1

1. Spain considers that the final phrase of the *chapeau*, which reads "when committed intentionally", should be deleted on the ground that it excludes from the definition of money-laundering the element of "negligent laundering", whose establishment as a criminal offence, albeit debated in theoretical terms, would appear to be aimed at laying down penalties in respect of cases in which bank and financial operatives fail to exercise due diligence, as an inherent part of their duties, in preventing money-laundering from taking place, provided that such failure constitutes negligence of a degree deemed to be serious.

2. Subparagraphs (a), (b) and (c) of option 1 contain the words: "knowing that such property is the proceeds of crime". Spain is of the view that that wording needs to be amplified by specifying what category of offences constitute those which could provide the basis for money-laundering to take place; the present wording, whereby the property to be laundered is the proceeds of crime, is too ambiguous, as it is broad enough to accommodate any of the statutory offences established in the respective national legislations.

3. From an administrative point of view, money-laundering is dependent on the laundered property being derived from:

(a) Criminal activities related to toxic or narcotic drugs or psychotropic substances;

(b) Criminal activities related to armed bands or organizations or terrorist groups;

(c) Criminal activities pursued by organized bands or groups.

Paragraph 2

4. Subparagraph (b) reads: "It may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence".

5. The legal definition of the offence of money-laundering generally establishes as criminal acts the acquisition and utilization of property or profits from a particular criminal activity, so that such acts form a special category of the offence of receiving.

6. This statutory offence of receiving requires that the offender should not have taken part in the criminal act, either as perpetrator or accomplice; that such person should be aware of the fact that an offence has been committed; and that he or she should make personal use of the illegally acquired assets.

7. Those requirements are identical to those contained in the definition of money-laundering, the sole difference being that, in the latter, the illegally acquired assets may be for personal use or for the use of a third party. That implies that the elements required for constitution of the offence of money-laundering can be summarized as follows:

(a) Previous commission of an offence;

(b) Non-participation by the receiving party in the offence as either perpetrator or accomplice;

(c) Knowledge of the offence committed; and

(d) Personal use or use by a third party of the illegally acquired assets.

8. In the light of the above, Spain considers that the reference in subparagraph (b) should be deleted in view of the fact that, in many legislations, the person who committed or took part in the prior criminal activity in question may not be charged with the offence of money-laundering in respect of assets deriving from that offence.

Paragraph 3

9. Subparagraph (a) reads: "Ought to have assumed that the property was the proceeds of crime". The wording "ought to have assumed" allows for the possibility that States Parties define the offence of "negligent laundering" in their domestic legislations but in relation solely to who does the laundering, namely, the offender.

10. Regarding that question, Spain is of the view that it would be preferable to use the formula set out in the first point of the present document, in which reference is made to the possibility of providing a generic definition of the offence of money-laundering committed through negligence, whereby not only should the person who performed the act of money-laundering have assumed or supposed that the property was the proceeds of an offence, but the bank and financial operatives concerned should also have been expected to have made that assumption.

Paragraph 4

11. Subparagraph (a) reads: "A person convicted as a member of organized crime shall prove the legality of the purchase of goods that belong to him [or her] or in respect of which he [or she] acts as owner, otherwise they shall be confiscated".

12. This point clearly presupposes the possibility of including in States Parties' legislations what is termed "reversal of the burden of proof", which is not admissible in many constitutional systems, since the presumption of innocence is a fundamental right guaranteed by many constitutions.

13. Consequently, this option is not possible in many legal systems. However, that does not rule out the possibility of this presumption being essentially nullified by the presence of other means of proof, not only direct but also indirect, or based on presumptions, the latter being termed "circumstantial evidence".

14. In the view of Spain, circumstantial evidence must conform to the following principles:

(a) There must be more than one item of evidence, and if there is only one, it must have exceptional evidentiary force;

(b) Items of evidence must be concomitant and have an unambiguously incriminating character;

(c) Items of evidence must be closely interrelated;

(d) There must exist a specific and direct connection between the evidence and the central offence which it is sought to prove through a process of deduction based on experience and the rules of logic.

Article 4 *bis*
Measures to combat money-laundering

15. The list of measures proposed in the draft Convention is already included in Spanish and European Community legislation.

16. In this regard, it should be pointed out that the list given in the draft Convention with respect to the term "financial institution"[1] is incomplete, it being considered that it should also include, as parties subject to the regime, a further group of institutions or establishments engaging in professional or business activities particularly susceptible to use for the purposes of money-laundering, such as the real estate business, activities relating to the trade in jewellery and precious stones and metals, the trade in works of art and antiquities, and investment in stamp and coin collections.

17. The possibility should also be explored of devising a mechanism for extending the scope of the standard to other institutions that, while not expressly specified, could be used by individuals seeking new ways of performing money-laundering operations. Such institutions could include cash-carrying services, pawnbrokers and currency-exchange bureaux.

Article 7
Confiscation

Paragraph 1

18. Subparagraph (a) refers to confiscation of property the value of which corresponds to that of such proceeds. In many legislations, confiscation is defined not as a penalty but as an incidental consequence, imposition of which requires the fulfilment of two conditions: (a) conviction of a person on the charge of committing a principal offence; and (b) complete assurance that the object to be confiscated is the property of that person.

19. Confiscation may be applied to the assets acquired through commission of an offence, the instrumentalities used in its commission or the profits derived from the offence, whatever transformations they may have undergone. Consequently, many legislations do not provide for confiscation of the equivalent value of the original object.

[1] See footnote 36 of the draft Convention, which indicates what is denoted by "financial institution".

20. This gap in the law precludes consideration of the formula set out in subparagraph 1 (a) in which reference is made to "property the value of which corresponds to that of such proceeds".

Paragraph 2

21. In paragraph 2, reference is made to "freezing". This expedient is unknown in many legal systems in the context of confiscation. Naturally, those systems provide for the attachment of property, but their purpose differs radically from that of confiscation. Confiscation implies the transmittal of ownership of a thing to the State, whereas freezing of property is aimed at ensuring the discharge of certain responsibilities, essentially within the scope of civil law.

Paragraph 5

22. Paragraph 5 refers to disposal for specific purposes of the proceeds of property acquired through the offence. As regards the possible creation of a fund derived from property confiscated in connection with drug trafficking and other related offences, Spain is of the view that there should be certain specific purposes for which such a fund should be designated, such as the following:

(a) Creation of programmes for the prevention of drug dependence and provision of care for drug-dependent persons and for facilitating their social rehabilitation and reintegration into the labour force;

(b) Intensification and improvement of activities aimed at prevention, investigation, prosecution and punishment of the offences referred to in Law 36/95 (on drug trafficking and related offences).

23. With regard to the provision concerning the possibility of "sharing with other States Parties ..." (see subparagraph b (ii)), it should be stated that many legislations do not allow for such a possibility, but rather only provide for payment of part of the net profits obtained through sale of the property—under no circumstances the property itself—into international cooperation programmes related to programmes for the prevention of drug dependence and for the rehabilitation and social reintegration of drug-dependent persons.

Sweden

[Original: English]

Firearms protocol to the United Nations Convention against Transnational Organized Crime

Sweden welcomes Canada's initiative. Sweden's preliminary and overall response to the Canadian draft is positive.

The purpose and scope of the draft Protocol with respect to the types of issues that are appropriate for discussion look good. The preamble to the instrument looks very good. The fact that judicial cooperation is dealt with only marginally is also a positive feature; such provisions are better framed in general terms and should therefore be included in the Convention. The draft is multidisciplinary and therefore highly appropriate for a protocol.

The draft Protocol highlights the States Parties' concern over the firearm issue and the fact that the matter needs to be tackled from different perspectives.

From the Swedish point of view, it may, however, be necessary to include exceptions and other amendments in the proposed articles during the forthcoming work. Some aspects in the draft, for example, would require legislative changes in Sweden and consequently specific parliamentary approval. While that would have to be approached with care, our initial reaction to those elements can be described as cautiously positive.

A number of questions have been left outstanding and/or depend on what may be agreed on with regard to the Convention itself. That naturally makes it difficult to give an opinion on those questions and other details. It is, however, good that the text—and in particular the footnotes—so clearly highlight the connection of the Protocol with the Convention and that special provisions are intended to be included in the Protocol only when the general provisions in the Convention prove to be insufficient or inapplicable for the purposes of the Protocol.

One general point is that there is perhaps a need to go over the proposed articles and look at—and perhaps distinguish between—what should apply to major transports of arms for export etc. and what should apply to cases where, for example, a single weapon is conveyed across a border by its legitimate owner.

Some points that can be made already, before the next stage of the work, are presented below.

Preambular paragraph (b) mentions the increase in the illicit manufacturing of and trafficking in firearms etc. The evidence of that increase should perhaps be quoted or at least mentioned.

In article II (Definitions), paragraph (b), on "Controlled delivery", is unnecessary if the Protocol does not contain provisions concerning controlled deliveries (cf. the note on the last page of the draft). If there are to be such provisions, then they belong in the Convention. The use of controlled deliveries is controversial in Sweden. Provisions concerning controlled firearm deliveries could cause difficulties for us.

Concerning article II, paragraph (e), it is perhaps unclear how the words "if any one of the States Parties concerned does not authorize it" should be interpreted. If a permit is required for each individual case, that could cause difficulties in Sweden. If, on the other hand, authorization can be granted through general provisions in the States concerned and/or follow as a result of agreements between States (or supranational instruments), there will be no problem for Sweden.

Provisions concerning criminalization are appropriate in the Protocol but less so in the Convention.

While our preliminary reaction is positive, the proposed article V, paragraph 1 (b), may require legislative changes in Sweden. If so, the question must naturally be considered at the national level before Sweden's position can be more fully stated.

The illicit export and import of firearms are punishable in principle in Sweden under the Law on Penalties for the Smuggling of Goods (in certain cases connected with the European Union, special rules apply and the penalty is a fine or six months' imprisonment for the smuggler). Attempt and participation in the smuggling of goods are normally punishable under chapter 23 of the Swedish Penal Code. However, preparation and conspiracy are punishable only when narcotics are involved. Despite the reservations concerning "basic concepts of the legal systems ..." etc., it may be necessary to discuss—

at least with respect to different forms of illicit trafficking according to the definition in article II, paragraph 5—the type of participation etc. that should carry a penalty.

Articles VI and VII are very preliminary and are dependent on the final drafting of the Convention. Sweden's preliminary response is positive, without committing ourselves to details. With respect to the forfeiture provisions in article VII, the question should perhaps be asked whether paragraph 1 is really necessary. It may be a measure that should follow from or be regulated in the Convention. Article VII, paragraph 2, however, seems to be "firearms-specific" and therefore belongs in the Protocol. Sweden's preliminary reaction is that regulation seems reasonable.

Concerning article IX, paragraph 1, Sweden does not today require the marking of, for example, imported firearms. Consideration and discussion may be needed here (as exceptions may be necessary in some cases, such as collectors' items). It might also be the case that it is sufficient for a firearm to be marked in such a way as to enable identification: information concerning the importer and previous owners could instead be registered in the firearms register or its equivalent. The objectives of the provisions can undoubtedly be achieved in different ways appropriate to the legislative systems of different countries.

The provisions in article XIV, paragraph 3, concerning cooperation in the tracing of firearms, belong more to "judicial cooperation" and should not, therefore, come under "Exchange of information". Furthermore, it may be necessary to consider whether a "firearms-specific" provision on tracing is needed. Perhaps such a provision should be in the Convention instead. That question could be considered in future work.

Article XV, paragraph 1, does not seem to add much and is covered in substance in article III. Perhaps a general provision on bilateral and regional cooperation does not add anything. Paragraph 2 may be difficult to realize in view of the multidisciplinary area of application. Perhaps the contact point's area of responsibility can be made more precise through a reference to some of the articles where there is a tangible need for a contact.

Article XVII, concerning confidentiality, could perhaps be rewritten (the first line mentions constitutions and international agreements, whereas line 4 refers to "legal reasons", which could be something else). Another proposal that could require legislative change in Sweden is the one that authorizes the entity responsible to make information publicly available without first informing the State Party providing the information.

On article XVIII (Technical assistance), we feel that the provisions need to be made more precise.

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Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4, 4 *bis*, 7 and 8

Proposals and contributions received from Governments

Addendum

		Page
II.	Proposals and contributions received from Governments	2
	United Kingdom of Great Britain and Northern Ireland	2

*A/AC.254/12.

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II. Proposals and contributions received from Governments

United Kingdom of Great Britain and Northern Ireland

[Original: English]

Article 4 *bis*: Money-laundering

1. The United Kingdom strongly supports the inclusion in the Convention of the provisions covering legislation and systems to counter money-laundering. Money-laundering is a serious transnational crime in its own right, with the potential to corrupt the global financial system. It also provides the life-blood of finance to support other serious crimes. Action against money-laundering is one of the key areas in which international standards and cooperation can help improve the fight against crime.

2. The United Kingdom believes that the United Nations Convention is an opportunity to support that process and to endorse and to extend the reach of international standards in the fight against money-laundering. But there is also a risk that, perversely, the United Nations Convention could undermine international action in this area by setting a new set of standards at a weaker level than the established international standards.

3. The United Kingdom notes that the 40 recommendations of the Financial Action Task Force already constitute a global international standard in measures to counter money-laundering. They have been endorsed by the General Assembly in its resolution S-20/4 D of 10 June 1998 on countering money-laundering. They have also been adopted by a number of regional bodies, forming a global network that establishes the 40 recommendations as a truly global standard. The United Kingdom's concern is that the United Nations Convention could undermine those standards if it sets different requirements.

4. The current draft of the Convention incorporates some of the Financial Action Task Force recommendations into articles 4 and 4 *bis*, but not others. The United Kingdom therefore proposes the amendment below.

Commentary on the draft text

5. Paragraph 1 (a) requires each State Party to ensure that it has a comprehensive regulatory and supervisory regime for banks and non-bank financial institutions, and other bodies which are particularly susceptible to money-laundering and within its competence; this is consistent with recommendations 8 and 9 of the 40 recommendations of the Financial Action Task Force on Money Laundering. The text of the 40 recommendations is available in documents A/AC.254/CRP.11 (English and French) and A/AC.254/CRP.12 (Spanish).

6. The text highlights that the regime against money-laundering must require customer identification, record-keeping and the reporting of suspicious transactions. This list is, however, not exhaustive; the regime must be comprehensive and must therefore include other elements. Guidance on this and the definition of terms is provided by paragraph 2 of the article (see below).

7. Paragraph 1 (b) requires a State Party to ensure that the relevant authorities have the ability to cooperate and exchange information at both the national and international levels. Such cooperation and exchanges are also essential for preventing and investigating money-laundering.

8. For the purpose of implementing and applying the provisions of both article 4 (the criminalization of money-laundering) and paragraphs 1 and 2 of this article (a comprehensive domestic regulatory and supervisory system and the ability to cooperate at the national and international levels) all States Parties are required under paragraph 2 to adopt and adhere to the international standards set by the Financial Action Task Force. The prominence of those standards was recognized by the General Assembly in the 1998 Political Declaration and measures referred to above (para. 3).

9. Paragraph 3 provides that a State Party shall be in compliance with (present) article 23 of the draft Convention in respect of the obligations under article 4 and 4 *bis* if a State Party is subject to and participates in a regular process of peer review conducted by the Financial Action Task Force or other comparable regional body that assesses the implementation of anti-money-laundering regimes as set out in the article. The aim here is to ensure that there is no duplication of effort in respect of evaluations carried out under article 23 and those carried out by the Financial Action Task Force.

10. The United Kingdom considers that once the text of article 4 has been finalized by the Ad Hoc Committee, articles 4 and 4 *bis* might usefully be merged.

Article 4 bis

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, and other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to articles (14 and 19) of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels [within the conditions prescribed by its domestic legislation[1]].

2. For the purposes of implementing and applying the provisions of this article (4 and 4 *bis*), States Parties shall adopt and adhere to the international standards set by the Financial Action Task Force on Money Laundering established by the Heads of State or Government of the seven major industrialized countries and the President of the European Commission as set out for reference in annex ... to this Convention and as endorsed by the General Assembly in its resolution S-20/4 of 10 June 1998 on countering money-laundering.

[1] The United Kingdom has included these words to accommodate those delegations which might have a preference for references to domestic legislation in this subparagraph (as in articles 14 and 19) but the United Kingdom would not wish to see these included in the final article. This is an issue of general application that will need to be debated by the Ad Hoc Committee.

[2][3. With respect to the monitoring of implementation by States Parties of the obligations set forth in this article (4 and 4 *bis*), and without prejudice to the application of article (23) to other provisions of this Convention, a State Party shall be deemed to be in compliance with article (23) if that State Party is subject to and participates in a regular process of peer review conducted by the Financial Action Task Force or other comparable regional body that assesses implementation of anti-money-laundering regimes as set forth in this article.]

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[2] Depending upon the outcome of negotiations on article 23, this paragraph may require modification.